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ABSTRACT

This report describes and compares the honor and conduct systems at the Department of Defense's service academies and describes the attitudes and perceptions of students toward these systems. Principal findings included the following: (1) academy honor systems differ regarding toleration and standards of proof; (2) honor systems provide the majority of due process protections, while limiting others (such as the right to representation by counsel); (3) what constitutes an honor violation is unclear (e.g., widespread differences of opinion were found in a survey of students and administrators regarding the violation status of 27 specific acts); (4) students are reluctant to report honor violations; (5) Air Force Academy conduct hearings provide fewer protections than those at the other academies; (6) fewer rights are granted in academy administrative conduct systems than are mandated for other nonjudicial punishment; (7) academy students see themselves as overregulated by trivial rules; and (8) academy students perceive the conduct system as operating inconsistently. Appendices provide comments from the Department of Defense, a description of the questionnaire methodology, and a summary of the status of various scenarios under each academy's honor code. (DB)

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United States General Accounting Office

GAO

Report to Congressional Committees

April 1995

DOD SERVICE ACADEMIES

Comparison of Honor and Conduct Adjudicatory Processes

ED 382 144

ME 028 345

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United States
General Accounting Office
Washington, D.C. 20548

National Security and
International Affairs Division

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April 25, 1995

The Honorable Strom Thurmond
Chairman
The Honorable Sam Nunn
Ranking Minority Member
Committee on Armed Services
United States Senate

The Honorable Dan Coats
Chairman
The Honorable Robert C. Byrd
Ranking Minority Member
Subcommittee on Personnel
Committee on Armed Services
United States Senate

The Honorable John Glenn
United States Senate

As part of a comprehensive review of student treatment at the Department of Defense (DOD) service academies originally requested by Senator Nunn and Senator Glenn, we collected information on the honor and conduct adjudicatory systems at the Military Academy, the Naval Academy, and the Air Force Academy. The purpose of this report is to (1) compare the honor and conduct systems at each academy and describe how the various systems provide common due process protections and (2) describe the attitudes and perceptions of the students toward the honor and conduct systems.

As arranged with your staff, unless you publicly announce its contents earlier, we plan no further distribution of this report until 1 day from its date of issue. At that time, we will send copies to other interested congressional committees and Members of Congress; the Secretaries of Defense, the Army, the Navy, and the Air Force; and the Superintendents of the Military Academy, the Naval Academy, and the Air Force Academy. We will also make copies available to other interested parties on request.

If you or your staff have any questions concerning this report, I can be reached on (202) 512-5140. The major contributors to this report are listed in appendix IV.

Mark E. Gebicke

Mark E. Gebicke
Director, Military Operations
and Capabilities Issues

Executive Summary

Purpose

Over the years, there have been several highly publicized incidents at the Department of Defense's (DOD) service academies involving honor or conduct charges against students. The former Chairman of the Senate Committee on Armed Services and the former Chairman of its Subcommittee on Manpower and Personnel asked GAO to review the adjudicatory systems used at the academies to make decisions regarding student conduct and performance.[1] The objectives of this report are to (1) compare the honor and conduct systems at each academy and describe how the various systems provide common due process protections and (2) describe the attitudes and perceptions of the students toward these systems.

Background

The service academies are one of the main sources of newly commissioned officers. Over the last 20 years, the academies have provided about 10 percent of annual new officer accessions, with the bulk of the remainder coming from the Reserve Officers Training Corps and officer candidate schools. Each academy operates adjudicatory systems to maintain discipline and standards and to train students. The conduct system at each academy establishes rules and regulations and provides a process for dealing with those accused of violations. In addition, each academy has a largely student-run honor system that prohibits lying, cheating, and stealing.

Results in Brief

Although the honor systems at the academies have many similarities, there are some prominent differences among them. The honor codes at the Military and Air Force academies include non-toleration clauses that make it an honor offense to know about an honor offense and not report it, while at the Naval Academy failure to act on a suspected honor violation is a conduct offense. Differences also exist in the standard of proof that is used in honor hearings, "beyond a reasonable doubt" used at the Air Force Academy versus "a preponderance of the evidence" used at the other academies.

Academy honor hearings provide students with the majority of the protections typically associated with procedural due process, with some exceptions and limitations. The most prominent limitations exist on the right to representation by counsel and the right to remain silent and avoid

[1]Each academy also has an academic board that makes decisions regarding student academic performance deficiencies. Since academic deficiencies are handled much differently from conduct and honor cases, the operation of the academic boards has been addressed in a separate report, DOD Service Academies: Academic Review Processes (GAO/NSIAD-95-57, Apr. 5, 1995).

self-incrimination. All three academies impose a limitation on the right to counsel by prohibiting military or civilian lawyers from representing cadets and midshipmen in the hearing itself. The right to remain silent is not granted until the individual is actually charged with an offense.

Responses to a GAO questionnaire indicated that academy students generally saw their honor systems as fair. In some cases, whether an act constitutes an honor violation is not completely clear because the intent of the accused must be inferred from the investigative and hearing processes. Also, there was considerable reluctance among students to report their fellow students for honor violations.

In general, the administrative conduct systems at the Military and Naval academies provide several due process protections, with some exceptions and limitations on others. The Cadet Disciplinary Board proceedings at the Air Force Academy, on the other hand, provided fewer due process protections than proceedings at the other two academies. As of January 1, 1995, the Air Force Academy eliminated the Cadet Disciplinary Board and implemented a two-step process aimed at improving timeliness and fairness in dealing with major conduct offenses. While the conduct systems are characterized by academy officials as administrative, rather than judicial, they offer less due process protection than is mandated across DOD for other nonjudicial disciplinary proceedings.

A large majority of the students questioned the reasonableness of many of the minor rules and regulations in the conduct codes. Also, many students perceive academy handling of conduct offenses, the application of rules and regulations, and the imposition of disciplinary actions as inconsistent.

Principal Findings

Academy Honor Systems Differ Regarding Toleration and Standards of Proof

The academy honor systems differ on several key features. The codes at the Military and Air Force academies require cadets to report a fellow cadet if they become aware of an honor violation and the individual does not turn himself/herself in, and failure to do so itself constitutes an honor violation. At the Naval Academy, failure to act on an honor violation is a conduct violation, not an honor offense. The Naval and Military academies use the "preponderance of the evidence" standard of proof in their honor proceedings, while the Air Force Academy uses the "beyond a reasonable

doubt" standard. The higher standard of proof used at the Air Force Academy makes it more difficult to obtain a conviction and, therefore, offers more protection for an accused cadet.

Honor Systems Provide the Majority of Due Process Protections, While Limiting Others

The honor systems provide many due process protections, such as adequate notice, open hearings, an impartial tribunal, and knowledge of incriminating evidence. However, several other protections are limited, such as the right to representation by counsel. The academies provide legal assistance to students charged with an offense and encourage them to seek advice. However, none of the academies allows a student's legal counsel to represent the student during the actual hearing or in subsequent reviews of the hearing outcome before academy officials.

Another limitation involves the right to remain silent. When an officer or student in the chain of command requests a statement from a student, the student must comply by revealing all information about the incident, even if answering will implicate the student in a violation. The right to decline to make a statement is generally not recognized until it becomes likely that the student will be charged with a violation of the Uniform Code of Military Justice.

What Constitutes an Honor Violation Is Unclear

In a questionnaire, GAO asked the students and academy honor officials at each academy whether 27 specific acts were or were not honor violations. Widespread difference of opinion was found among students and between students and officials regarding what constituted a violation. Also, there was no clear criteria for determining whether a given act would be charged as a conduct offense or an honor offense.

Students Are Reluctant to Report Honor Violations

The absolute wording of the honor code, where all violations are viewed as equally serious, appears to be unrealistic to many students. Student responses to questions regarding whether they would report a peer for specific honor violations indicated that many cadets and midshipmen would not turn in a company- or squadron-mate, even if they had direct knowledge that a violation had taken place.

Air Force Academy Conduct Hearings Provided Fewer Protections Than Those at the Other Academies

The administrative conduct systems at the Military and Naval academies provide several due process protections while imposing limitations such as not allowing an attorney to represent the accused at the conduct hearing. The Cadet Disciplinary Board, in place until recently at the Air Force Academy, imposed more limitations than the other academies by restricting an accused's opportunity to present argument, cross-examine witnesses, receive all information going to the board members, and by withholding the right to remain silent until after it has been decided that a violation of military law may have occurred.

Fewer Rights Granted in Academy Administrative Conduct Systems Than Are Mandated for Other Nonjudicial Punishment

The conduct systems are administrative, as opposed to judicial, in nature. As such, they are similar in intent to other forms of nonjudicial disciplinary proceedings covered under the Uniform Code of Military Justice. However, the administrative adjudicatory systems provide fewer protections than are mandated by DOD or service policies on nonjudicial disciplinary proceedings. Areas where academy students have fewer such protections include the rights to have attorneys represent them at hearings, to remain silent, and to an independent appeal, and a limitation on the duration of restrictions imposed for punishment.

Academy Students See Themselves as Overregulated by Trivial Rules

With regard to conduct rules, questionnaire responses showed strong student concerns about what they saw as the unreasonableness of the conduct rules. About 70 percent of the students perceived that many regulations were trivial and unrealistic and over three-quarters indicated that the academies should allow students more freedom.

Academy Students Perceive the Conduct System as Operating Inconsistently

Three-quarters or more of the students at each academy perceived that conduct offenses were handled differently across the academy. In addition, they perceived that the rules and regulations were unevenly applied and that students received different disciplinary actions for the same offenses.

Recommendations

GAO is not making any recommendations.

Agency Comments

DOD generally concurred with the report. DOD stated that it sees no clear basis for concluding that protections provided under the administrative conduct systems must parallel nonjudicial disciplinary proceedings.

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Abbreviations

DOD	Department of Defense
UCMJ	Uniform Code of Military Justice

Introduction

The service academies are one of the main sources of newly commissioned officers. Over the last 20 years, the academies have provided about 10 percent of annual new officer accessions, with the bulk of the remainder coming from the Reserve Officers Training Corps and officer candidate schools.

Each of the academies operates adjudicatory systems to provide students with training and maintain discipline and standards. The conduct system at each academy establishes rules and regulations and provides an administrative process for dealing with those accused of violating them. In addition, each of the academies has a largely student-run honor system that prohibits lying, cheating, and stealing.[1]

Although each institution's processes are somewhat unique, students accused of honor or conduct violations at the various academies experience generally similar investigative and separation procedures. The honor and conduct adjudicatory systems at each academy are considered by the academies to be administrative systems. That is, they are intended primarily as an aid in maintaining discipline and order. As such, they are nonjudicial in character.

Disciplinary Systems

The U.S. Constitution, through the President, gives a commanding officer executive authority (the right to lead). The Congress, through the Uniform Code of Military Justice (UCMJ), provides commanders with quasi-judicial responsibility when they act in an administrative (nonjudicial) punishment capacity, and judicial authority when they act as a court-martial convening authority.

Academy students are expected to adhere to civilian laws, UCMJ, and service and academy directives and standards. Unless excluded by statute, all statutory provisions applicable to military members are also applicable to cadets. Article 2 of the UCMJ[2] specifically cites "cadets, aviation cadets, and midshipmen" as being subject to UCMJ. The superintendent of each academy has also been designated as a general court-martial convening authority.

[1]The honor codes at the Military and Air Force academies also prohibit toleration (failure to report) of those who violate the honor code. At the Naval Academy, failure to act on an honor violation is a conduct offense.

[2]10 U.S.C. 802(a)(2).

Conduct violations are grouped into categories, depending upon the seriousness of the offense. For minor offenses, adjudication and punishment are determined by a member of the student or officer chains of command. Students who violate more serious disciplinary standards are subject to administrative disciplinary hearings or court-martial for serious violations of UCMJ. Punishments range from demerits to expulsion and include a wide range of intermediate sanctions.

Honor Systems

Each of the academies also has a largely student-run honor system that is intended to set the standard for moral behavior of the cadets and midshipmen with the ultimate objective of building the trust and integrity necessary for military teams to work effectively. At each academy, a committee of cadets is elected annually by the student body to administer the honor system. This group also provides members to sit on student honor boards. All accused honor violators are provided certain due process rights in the adjudication of their cases, and potential punishment depends on the circumstances of each case.

Under the honor systems, anyone may report a cadet/midshipman for a suspected honor violation, including the individual himself/herself. When a possible honor violation is reported, a student investigator or investigative team is appointed. If the investigation finds sufficient evidence that an honor violation has occurred, a formal honor hearing is convened. If the honor board finds an individual guilty, the case file is routed to the Commandant and the Superintendent who review the evidence and decide upon punishment. The service secretary is the approval authority for expulsions.

The Honor Education Programs

The honor systems at the academies consist of more than the honor codes and the processes established for investigating and adjudicating alleged violations. A key part of the honor systems involves the academies' efforts to inculcate their students with a high standard of ethics and integrity.

Military Academy

The honor education program at the Military Academy at West Point, New York, is a continuous, progressive, 4-year program. The overall goal is to foster an internal commitment to ethical standards that is beyond reproach. The honor education program includes 50 hours of instruction, 12 of which take place during cadet basic training, 35 during the academic year, and 3 during cadet field training.

The focus of honor education changes as cadets progress through their academy careers. Fourth class honor instruction is intended to give new cadets an appreciation and understanding of the tenets of the honor code and its application to the cadets, both at the academy and while away from the academy. Third class instruction focuses on developing an understanding of the significance of being honorable as a leader of subordinates. Second class honor instruction focuses on the transition from honorable living as a cadet to honorable living as an officer. First class year is a time for reflection and coming to terms with the responsibilities of the office that cadets will enter at graduation. In addition, "X-Y letters," which are descriptions of actual honor cases and their resolutions, are distributed to cadets.

Naval Academy

Honor education at the Naval Academy in Annapolis, Maryland, is in the process of being revised and unified under a new character development program. The character development officer oversees this program and is directly responsible to the Superintendent for educating, training, and providing feedback to students and staff regarding the honor concept.

While midshipmen have always received honor training during each of their 4 years at the academy, the curriculum has been largely repetitive from year to year. A group of faculty, administrators, and athletic coaches is currently rewriting the curriculum, which is expected to be implemented during the 1994-95 school year. The program is expected to include 12 hours of instruction per year.

In addition to formal instruction, midshipmen receive periodic updates on honor from the Ethics Advisor and "XYZ" letters. These letters are descriptions of actual honor cases with explanations of the outcomes and generalized advice for midshipmen who may be facing similar ethical dilemmas.

Air Force Academy

Honor education at the Air Force Academy in Colorado Springs, Colorado, is part of a comprehensive, 4-year character development program. The overall goal of honor education is to introduce cadets to the four tenets of the honor code as a minimum standard for their conduct. The honor education program includes 61 hours of instruction, 18 of which occur during basic cadet training and 43 of which take place during the academic year.

The honor education program uses a variety of approaches, including lectures, speeches, skits, film clips, case studies, scenarios, and experiential activities. In addition, cadets receive "Cadet X" letters to keep them informed of current honor case proceedings and to explain the outcomes of cases.

Congressional Interest in Academy Adjudicatory Systems

The Congress has long been interested in the academies' adjudicatory systems. As those who appoint students to attend the academies, Members of Congress are concerned that the students are treated fairly. In addition, congressional attention has been drawn to the honor systems, in particular, due to periodic episodes of large-scale honor violations. During hearings on the academies, Members of Congress have periodically raised questions about the honor systems because of their observations of legally or ethically questionable behavior (such as falsified body counts, inflated readiness reports, and coverups of illegal or embarrassing acts) by military officers.

Each of the academies has experienced large-scale cheating episodes. The most recent mass cheating scandal occurred at the Naval Academy in 1993, in which 88 midshipmen were found guilty of honor violations for cheating on an electrical engineering exam. In 1974, seven midshipmen were forced to resign for cheating on a celestial navigation exam after an instructor allowed several midshipmen to examine a copy of the test during a review session and they then shared the information with others.

At the Military Academy, 90 cadets were forced out for cheating on examinations in 1951, 42 cadets left after being accused of cheating in 1966, 21 cadets were dismissed for cheating and condoning cheating in 1973, and 134 cadets left for cheating or tolerating cheating on a take-home computer project in 1976.

At the Air Force Academy, 109 cadets left in 1965 for stealing and selling exams or tolerating the practice, 46 cadets left in 1967 after sharing test questions, 39 cadets were separated for cheating and tolerating those who did in 1972, 6 cadets resigned after being found to have collaborated on a physics lab exercise in 1976, and 4 cadets left the academy as a result of an economics class honor incident in 1992. Episodes such as these have

triggered extensive congressional hearings such as those convened in the House of Representatives in 1967-68[3] and the Senate in 1976[4] and 1994.[5]

But congressional interest in the academies' honor systems has not been confined solely to the mass cheating episodes. Another concern has been the academies' effectiveness at inculcating new officers with a sense of honor and ethics. For example, the Senate Committee on Armed Services became concerned about the amount of ethics-based coursework at the academies because the principal people convicted by juries in the Iran-Contra scandal were all academy graduates. This concern prompted the Committee to ask the Secretary of Defense to report on how the academies were implementing the Committee's recommendation that they incorporate into their curricula topics such as the constitutional limits on military authority, civilian/military relations, the proper response to illegal orders, and the misuse of power to further personal goals.[6]

Characteristics of Adjudicatory Systems

A primary objective of adjudicatory systems, from the point of view of those subject to the systems, is "fairness." To try to ensure fairness, adjudicatory systems are typically designed in ways that minimize or structure the discretion of the adjudicator(s) by imposing standardized procedures and mandating certain protections for the accused. The categories we used in this report to describe and compare the various adjudicatory processes are derived from the legal concept of "procedural due process," which refers to safeguards incorporated into adjudicatory proceedings.

The concept of due process is embodied in the 5th Amendment of the U.S. Constitution, which provides that no person shall "be deprived of life, liberty, or property, without due process of law." The concept of procedural due process implies that official governmental action must meet minimum standards of fairness and justice. Since the courts view due process as a concept that should be flexibly applied to fit the needs of a particular context, a body of case law has developed regarding the applicability of procedural due process protections to specific subgroups and particular settings. Due process protections are greater in criminal

[3]U.S. Congress, House Committee on Armed Services, Special Subcommittee on Service Academies, Report and Hearings: Administration of the Service Academies, 90th Cong., 1st and 2nd sess., 1967-68.

[4]U.S. Congress, Senate Committee on Armed Services, Subcommittee on Manpower and Personnel, Honor Codes at the Service Academies, 94th Cong., 2nd sess., 1976.

[5]U.S. Congress, Senate Armed Services Committee, Subcommittee on Force Requirements and Personnel, Hearings on the Honor Systems and Sexual Harassment at the Service Academies, February 3, 1994.

[6]U.S. Congress, Senate Armed Services Committee Report 101-384, p. 167.

proceedings than in non-criminal proceedings (such as administrative hearings).

Courts have established that students facing expulsion from tax-supported colleges and universities have constitutionally protected interests that require minimal due process protections and established standards for student disciplinary proceedings.[7] While these standards and guidelines have been used in devising due process requirements for academy adjudicatory proceedings, courts have ruled that the government's interest in assuring the fitness of future military officers permits the academies greater freedom in providing due process protections than is accorded civilian institutions or authorities.[8]

We believe the due process protections and limitations applicable to academy adjudicatory proceedings can be best understood by comparing them with the broadest range of due process protections available in civilian proceedings. In reviewing judicial and administrative proceedings, we identified 12 categories of due process protections commonly used to ensure fairness in hearings. These categories are used in this report to discuss the academy adjudicatory systems and include the rights to

- adequate notice,
- an open hearing,
- an impartial tribunal,
- present argument,
- present and cross-examine witnesses,
- know opposing evidence,
- be represented by counsel,
- have the decision based solely on the evidence presented,
- have a complete record of the proceeding including findings of fact and reasons for the decision,
- an independent appellate review,
- remain silent, and
- have involuntary confessions excluded.

These 12 categories of due process rights include several rights derived from criminal hearings. However, their inclusion does not mean we believe that all these rights should be provided in academy adjudicatory systems. Our purpose is to lay out as complete a set of due process

[7]Dixon v. Alabama State Board of Education, 294 F.2d 150 (5th Cir.) cert. denied, 368 U.S. 930 (1961).

[8]Wasson v. Trowbridge, 382 F.2d 807 (2d Cir. 1967), Hagopian v. Knowlton, 470 F.2d 201 (2d Cir. 1972).

protections as possible to facilitate a comprehensive discussion and comparison of the various adjudicatory systems.

The academies classify their honor and conduct systems as administrative, as opposed to judicial, processes. Over the last 25 years, a number of cadets and midshipmen separated by the academies for honor or conduct offenses have appealed to the federal courts for relief. The courts have generally found that the academies' adjudicatory systems provide students with the due process protections required by existing law for administrative systems.

Objectives, Scope, and Methodology

The former Chairman of the Senate Committee on Armed Services and the former Chairman of its Subcommittee on Manpower and Personnel asked us to review various aspects of student treatment, including the adjudicatory systems, at the three Department of Defense (DOD) service academies. The objectives of this report are to (1) compare the characteristics of the honor and conduct systems at each academy and describe how the various systems provide common due process protections from the perspective of key participants in the process and (2) describe the attitudes and perceptions of the students toward the honor and conduct systems. A separate report describes the operation of the academic adjudicatory processes at each academy.[9]

We reviewed academy rules and regulations, historical accounts of the academies, studies and reviews related to the operation of the honor and conduct systems, and files and case law on disciplinary and honor cases. We interviewed academy officials, staff, students, and the academy-provided attorneys at each academy who served as legal advisors to students accused of misconduct or honor offenses. We provided DOD with a draft of this report and its comments appear in appendix I.

In addition, we administered questionnaires at each of the three academies to samples of cadets and midshipmen in 1990-91 and again in 1994. We found little difference between the responses from these two periods and, therefore, we present only the 1994 data. A detailed description of the surveys and related methodological issues appears in appendix II.

We performed our review at the Military Academy, the Naval Academy, and the Air Force Academy from October 1993 to January 1995 in accordance with generally accepted government auditing standards.

[9]DOD Service Academies: Academic Review Processes (GAO/NSIAD-95-57, Apr. 5, 1995).

Comparison of Academy Honor Systems

The Military Academy, the Naval Academy, and the Air Force Academy operate under somewhat similar honor code adjudicatory systems. While the honor systems at each academy share many similarities, there are also some key differences. Each system provides students with certain common due process protections, while not providing or limiting various other protections.

The Origin of the Academy Honor Systems

The honor systems are strongly embedded in the history and traditions of the academies. The exact wording of the honor code or concept is somewhat different at each academy.

Military Academy

The Military Academy honor code states "a cadet will not lie, cheat, or steal, nor tolerate those who do." This honor code can be traced to the officer "code of honor" of the late 1700s and has existed in one form or another since the Academy was established in 1802. However, there was no formal honor system at that time and points of honor were generally settled on a personal basis with the offended party "calling out" the offender. The issue was then settled in some sort of a duel, usually a fistfight.

Formalization of the honor system started to evolve in the late 1800s when cadets began organizing "vigilance committees." The vigilance committee investigated possible honor violations and reported its findings to the cadet chain of command. If a cadet was found guilty, he would be pressured to resign. Although these committees were not officially recognized by Academy authorities, their existence was tolerated and their decisions unofficially sanctioned. In 1922, during the administration of Brigadier General Douglas MacArthur as Superintendent, a formal student honor committee was established, and it codified the existing unwritten rules.

The content of the Military Academy's honor code has evolved over the years, going through numerous changes in statement, interpretation, and application. The original code dealt only with lying. Later, cheating was added during Sylvanus Thayer's term as Superintendent (1817-33), although the code reverted back to dealing only with lying by 1905. The prohibition against stealing was originally only a matter of regulations. At some point in the mid-1920s, stealing became part of the honor code, although serious cases were still referred for court-martial. In 1970, the

honor code was changed to its current form to add an explicit "non-toleration" clause.[1]

Naval Academy

For over a century since its establishment in 1845, the Naval Academy had no official, formalized honor system. Although midshipmen were presumed to be inherently honorable, it was not until 1865 that they were first placed on their honor regarding not violating liberty limits. By the end of the 1800s, the meaning of honor had changed to a code of not reporting fellow classmates for any offense.

By the early 1900s, an informal honor code had evolved, and a fistfight would ensue if one's integrity were questioned. When a 1905 fight resulted in the death of a midshipman, President Theodore Roosevelt ordered that the honor code be abolished. Honor standards were then incorporated into the midshipman regulations and violations were processed as serious conduct offenses.

In late 1950, superintendent Admiral Barry W. Hill expressed his concern to the Brigade of Midshipmen (the student body) that not all midshipmen were living up to the fundamental concepts of honor and personal integrity. However, the Admiral

"... did not want a system that would codify right and wrong, or a system that over the years would become so involved with loopholes and elastic clauses that soon its very principles would degenerate into a set of rights and wrongs that would enable and tempt midshipmen to do wrong yet still be within the codified system's bounds of right."[2]

Guidelines for an honor committee and the Academy's "honor concept" were approved in September 1951. The "honor concept" is based upon midshipmen observing the fundamental principles of honesty, truthfulness, forthrightness, and trustworthiness. The Naval Academy makes a distinction between an honor concept and an honor code. As the Naval Academy's honor instruction states:

"The honor concept is not a code of specific requirements or prohibitions, but is violated by the commission or omission of any act contrary to those principles, provided the commission or omission was done with the intent to breach the fundamental concept."

[1]Up until 1970, non-toleration of honor offenders was an implied part of the code.

[2]Excerpted from "The History of Honor at the United States Naval Academy from its Founding up to the Establishment of our Present Honor Committees," written by H. Ross Perot when he was a first class midshipman.

The 1994 Naval Academy honor concept[3] states, "Midshipmen are persons of integrity: They stand for that which is right."

Air Force Academy

Prior to acceptance into the Cadet Wing, all Air Force Academy cadets take the Honor Oath, which states, "We will not lie, steal, or cheat, nor tolerate among us anyone who does. Furthermore, I resolve to do my duty and to live honorably, so help me God."

The Air Force Academy has had an honor code since its inception. A 1954 study group, headed by General Hubert R. Harmon, examined the honor codes and systems in use by military and civilian institutions throughout the country. From that review, the study group proposed a basic code and system that borrowed heavily from the system being used at the Military Academy. This basic code and system were presented to the Cadet Wing on a trial basis in 1955, and the Class of 1959, the first class to enter the Academy, adopted this code as the minimum standard for all cadets in September 1956.

Number of Honor Cases

The number of honor cases varies considerably from year to year and from one academy to another. In addition, the proportion of cases that are dropped without going to a board, the conviction rates, and the proportion of convicted students who are expelled also tend to vary.

The Military Academy had 84 honor cases in academic year 1993-94, 141 cases in academic year 1992-93, and 115 cases in academic year 1991-92. Fifty-nine percent of these cases were dropped without going to an honor board. Of the 139 cases that went to a board, about half of the cadets were found guilty. During this 3-year period, 20 cadets (about 28 percent of those found guilty) were separated for honor violations.

The Naval Academy had 80 honor cases in academic year 1993-94, 118 cases (excluding the electrical engineering exam incident for which the statistics are shown separately) in academic year 1992-93, and 100 cases in academic year 1991-92. Fifty percent of these cases were dropped without going to an honor board. Of the 149 cases that went to a board, a little over half of the midshipmen were found guilty. During this 3-year period, 16 midshipmen (about 20 percent of those found guilty) were separated for honor violations.

[3]Before the spring 1994 change, the Naval Academy honor concept stated: "Midshipmen are persons of integrity. They do not lie, cheat, or steal."

The electrical engineering exam incident originally entailed charges against 28 midshipmen, with 4 cases being dropped without a board. Of the 24 cases that went to honor boards, 11 midshipmen were convicted. Five of the convictions were overturned on review by Academy officials and three midshipmen were separated. When the extent of the cheating was determined to involve much higher numbers of midshipmen than were initially charged, the Navy established a special board made up of three admirals to adjudicate the cases. This board heard a total of 129 cases (including most of the cases that were previously heard by the midshipman honor boards) and found 88 midshipmen (68 percent) guilty. Twenty-six midshipmen (30 percent) were separated.

The Air Force Academy had 231 honor cases in academic year 1993-94, 164 cases in academic year 1992-93, and 154 cases in academic year 1991-92. Twenty-four percent of these cases were dropped without going to an honor board. Of the 371 cases that went to a board, 236 cadets (about 64 percent) were found guilty. During this 3-year period, 18 cadets (about 8 percent of those found guilty) were separated or resigned for honor violations.

Differences Among the Academy Honor Systems

The main differences among the honor systems at the three academies are summarized in table 2.1.

Table 2.1: Differences in the Service Academy Honor Code Adjudicatory Processes

Issue	Military Academy	Naval Academy	Air Force Academy
Does the honor code/concept include a non-toleration clause?	Yes.	No. (However, toleration is a conduct offense.)	Yes.
How long does a student have to report an honor code violation?	Encouraged to do so within 2 days, but can report any time before the alleged offender graduates and receives a commission.	21 days from the time a witness becomes aware of the violation.	Any time before the alleged offender graduates and receives a commission.
What, if any, defense counseling is provided to a student charged with a violation?	Two attorneys from the Academy's Staff Judge Advocate, who falls under the Superintendent in the chain of command.	The Navy's Judge Advocate General, Office of Legal Counsel, provides an attorney for midshipmen. Counsel reports to Anacostia Naval Station.	Two attorneys who report to the Director, Headquarters, U.S. Air Force Trial Defense Judiciary.
How many votes are required by the adjudicatory panel to convict a student of an honor code violation?	6 of 9 votes by the cadet members of the honor investigative hearing.	6 of 9 votes by the midshipmen members of the honor board.	6 of 8 votes by the 7 cadets and 1 field grade officer comprising the honor investigative board.
What is the "standard of proof" required at each academy to establish guilt?	A "preponderance of evidence."	A "preponderance of evidence."	Proof "beyond a reasonable doubt."

Academies Differ Regarding Non-Toleration Clause

The honor codes of the Military and Air Force academies have an explicit non-toleration clause. That is, they both include language that makes it an honor offense to allow an honor violation to go unreported. The Naval Academy's honor concept does not have such a clause.

While the honor concept of the Naval Academy does not include such a clause, midshipmen are not free to ignore honor violations. The Academy's honor instruction requires that anyone learning of what may be a violation of the honor concept must take one of four options. The options are (1) immediately report the evidence to the Brigade Honor Committee or discuss the incident with the suspected offender and then, (2) report the offender, (3) formally counsel the offender, or (4) take no further action if it appears that no violation was committed. In 1994, the Academy began

requiring that a formal counseling sheet be turned in to the Brigade Honor Chair through the Company Honor Representative when the counseling option is chosen. The counseling record is retained until the midshipman's graduation for use in the character development program should more than one counseling sheet be received. Failure to take one of the required courses of action constitutes a 5000-level conduct offense, the highest nonseparation offense level for a midshipman.

The non-toleration clause is one of the most controversial elements of the honor codes. In 1975, we reported that the Military Academy's studies indicated that non-toleration was one of the biggest problems for cadets and that toleration generally increased as a cadet progressed through his 4 years.[4]

Proponents of the non-toleration clause see self-policing as essential for making the honor code work effectively and to convincingly make the point that the individual has a duty to society that outweighs the bonds of friendship. Proponents have also stated that they do not see reporting one's peers as contrary to societal norms when it comes to public service. They cite, as examples, the duty of a lawyer to report a subornation of perjury, the duty of a practicing engineer to report falsification of design data, and the duty of an airline crew member to report a pilot for unauthorized drinking.

Despite these arguments, the non-toleration clause remains controversial. Critics point out that it requires a person to inform on his/her friends, which may conflict with a person's individual sense of honor and personal integrity. These critics cite the following as support:

- Douglas MacArthur, when disobeying orders to disclose the names of cadets guilty of hazing him, was quoted as saying: "My father and mother have taught me these two immutable principles—never to lie, never to tattle."[5]
- A federal court has stated "we cannot fail to note that honorable students do not like to be known as snoopers and informers against their fellows, that it is most unpleasant even when it becomes a duty."[6]

[4]Academic and Military Programs of the Five Service Academies (GAO/FPCD-76-8, Oct. 31, 1975).

[5]Rose, Michael T. A Prayer for Relief: The Constitutional Infirmities of the Service Academy Honor, Conduct, and Ethics Systems, New York University Law School, 1973 (p. 178).

[6]Zanders v. Louisiana State Board of Education, 281 F Supp. 747 (1968), p. 759.

Beyond the question of the reluctance to inform on one's peers, there is also some controversy with regard to the effectiveness of the clause. One critic has stated that since the large-scale cheating scandals were not discovered until they had encompassed a fairly large number of students, the clause may not be that effective. Some have also suggested that the non-toleration clause could actually contribute to large-scale cheating scandals because students could be deterred from turning in their peers for fear that those whom they turn in could retaliate by reporting them for past violations of the code. Finally, the non-toleration clause has been criticized as failing to recognize the importance of developing the ability in the students to exercise judgment and discretion about what should be done in any given case.

Time Limit for Reporting Honor Violations

At both the Military and Air Force academies, an honor violation can be reported any time up until the alleged offender graduates and is commissioned. Neither of their honor systems requires that an accuser report a violation within a specified period of time, even though failure to report a violation is considered to be toleration, which is itself an honor violation. Military Academy officials told us that cadets are expected to approach a suspected cadet within 24 hours and that another 24 hours is allowed for the individual to report to the honor representative.

At the Naval Academy, a midshipman who suspects or becomes aware of a possible honor violation must take action within 21 days. The purpose of this reporting period deadline is to provide a potential accuser with enough time to approach a possible offender to confirm the violation and decide on an appropriate course of action, and yet avoid a situation where someone's own past violation could be used to pressure him/her into ignoring another person's violation. Allowing an unlimited time to report is also seen as potentially unfair in that it may require a midshipman to defend his/her actions in an incident that may have faded from the individual's memory and the memory of other potential witnesses.

Organizational Independence of Defense Counsel

Each of the academies provides accused students with legal counsel at no cost. The attorneys who counsel cadets accused of honor violations at the Military Academy are under the Staff Judge Advocate's office, which is part of the Superintendent's chain of command. At the Naval Academy, the legal advisor reports outside of the Academy's chain of command to the Navy Judge Advocate General. A recent change at the Air Force Academy

now has its defense attorneys reporting to the Director, Headquarters, U.S. Air Force, Trial Defense Judiciary.

The placement of student legal counsel within the academies' chain of command raises the issue of whether their independence may be compromised. This issue was raised in the 1976 cheating scandal at the Military Academy, when several Army lawyers counseling accused cadets complained that Military Academy officials were interfering with their efforts to defend their cadet clients. An investigation conducted by the Army's Deputy General Counsel and the Chief Judge of the Army Court of Military Appeals concluded that several of the complaints of harassment of defense attorneys were well-founded.

Requirements for Conviction

In any adjudicatory proceeding in which facts are in dispute, adjudicatory board members can never be completely certain about what happened. Instead, they must develop a belief about what probably happened. Sometimes, they may wrongly conclude either that an innocent person is guilty or that a guilty person is innocent. The relative frequency of these two types of errors is affected by the number or proportion of panel members who must be convinced that a violation occurred and how convinced they must be.

In theory, the more people who must be convinced, and convinced to a higher degree of certainty, the stronger the evidence that would be needed for a conviction. Consequently, it is more difficult to convict in general. Conversely, the fewer the people who must be convinced of guilt, and the more doubt they are allowed to have about their guilty verdict, in theory the less evidence would be needed to convict. This situation would make it easier to convict innocent persons as well as the guilty. Therefore, two factors relevant to obtaining convictions are the degree of consensus required within the adjudicatory board and the required standard of proof.

The Number of "Guilty" Votes Needed for Conviction

In a civilian criminal trial in most states, a jury must be unanimous with regard to a guilty verdict. In military trials (general courts-martial), two-thirds of the members must agree before a person can be convicted (except for offenses for which the death penalty is mandatory, in which case the verdict must be unanimous).

The number of guilty votes needed for an honor conviction varies among the academies. A guilty verdict requires a two-thirds majority (six of nine) at both the Military and Naval academies and a three-fourths majority (six

of eight) at the Air Force Academy. At the Military and Naval academies, only students serve on honor hearing boards, while at the Air Force Academy the board consists of seven student members and one field grade officer.

Until 1994, the Naval Academy had required only a simple majority (four of seven) for a guilty finding. When we reviewed the academies in the mid-1970s, conviction of an honor offense required the unanimous vote of 12 board members at the Military Academy, 5 votes out of 7 board members at the Naval Academy, and a unanimous vote of an 8-member honor board at the Air Force Academy. Today's less rigorous consensus requirements came into being because academy officials were concerned that too many acquittals resulted from the "not guilty" votes of one or two board members.

The Standard of Proof Necessary for Conviction

The standard of proof determines the degree of certainty necessary in an individual honor board member's mind before he or she should conclude that a violation occurred. It represents an attempt to instruct adjudicatory panel members concerning the degree of confidence they should have in the correctness of their conclusions. The standard of proof required typically depends on the nature of the case:

- The standard of proof required in civilian criminal cases is proof "beyond a reasonable doubt." With regard to degree of confidence in such a finding, this standard has been defined as "fully satisfied," "entirely convinced," and "satisfied to a moral certainty."
- The standard of proof ordinarily used in civil cases is "preponderance of the evidence." This refers to evidence that is of greater weight or more convincing than the evidence that is offered in opposition to it, that is, evidence that as a whole shows that "the fact sought to be proved is more probable than not."

Use of the less stringent "preponderance of the evidence" standard reduces the risk that a guilty person will avoid conviction, but it simultaneously increases the risk that an innocent person will be wrongly convicted. Use of the more stringent "beyond a reasonable doubt" standard, on the other hand, reduces the risk that an innocent person will be wrongly convicted, while it increases the risk that a guilty person will escape conviction.

The "preponderance of the evidence" standard, in setting the two kinds of risks as essentially equal, implicitly assumes that it is no more serious to

convict an innocent person than it is to acquit a guilty person. Whereas, the "beyond a reasonable doubt" standard implicitly assumes it is far worse to convict an innocent person than it is to acquit a guilty one. This latter assumption is consistent with the principle derived from English common law that "it is better that ten guilty persons escape than that one innocent suffer."[7]

The Naval and Military academies require that honor verdicts be based on a "preponderance of the evidence." The Air Force Academy, however, uses the more stringent "beyond a reasonable doubt" standard.

Similarities Among the Academy Honor Systems

While there are a number of differences among the academy honor systems, there are also a number of similarities. For example, at each academy,

- students are elected by their peers to serve on the honor committee and administer the honor system,
- investigations of alleged violations are conducted by students,
- students are involved in determining whether an offense has occurred and not in determining what should happen to a convicted student,[8] and
- the service secretary has the final decision on whether a cadet/midshipman will be separated.[9]

Another similarity is that the inferred intent of the accused is the key factor that determines whether an offense has occurred. For example, consider the offense of "lying." There are two aspects to the offense. One is the question of whether what was said or indicated was, in a factual and objective sense, "true" or "false." Making a false statement does not, in itself, constitute an honor violation. Rather, the determining factor is the individual's intent. This leads to the possibilities shown in table 2.2.

[7]Blackstone, Sir William, Commentaries on the Laws of England, Book 4, Philadelphia, PA: Rees Welsh and Company, 1898, p. 1743.

[8]At the Air Force Academy, cadet honor boards may make recommendations to the Commandant regarding sanctions. The Commandant is not compelled to follow their recommendations but has been consistent with cadet recommendations in over 95 percent of the cases.

[9]The Air Force Academy recently proposed a change to the Secretary of the Air Force that would give the Superintendent the authority to separate third and fourth class students who have been found guilty of an honor offense.

Table 2.2: Determination of an Honor Offense

	Assessment of fact	
Assessment of intent	**True**	**False**
To tell the truth	Not a violation	An error, but not a violation
To mislead	A violation[a]	A violation

[a]There has been at least one case where a student has been expelled for an honor violation based on intent to mislead although the actual statement the student made was found to be true.

Discretion in Imposing Sanctions

If a person is found to have committed an honor violation, academy officials determine what sanction should be applied. This determination requires a subjective assessment of whether the honor violation was an isolated incident not indicative of the individual's true character (in which case the individual would likely be retained) or was an indication of an ingrained character flaw (in which case the individual would likely be separated).

Historically, the punishment for anyone convicted of an honor offense was almost always separation. Over the last several decades, the authority of academy officials to impose sanctions other than dismissal has increased. Academy officials now consider such factors as how long the student has lived under the honor code/concept, whether the offense was self-reported, whether the individual admitted the offense, and whether there were any previous violations in determining the disposition of a case. Over the 3-academic year period 1991-94, the percentages of those who admitted or were convicted of honor offenses who were separated from the academies were 28 percent at the Military Academy, 20 percent at the Naval Academy, and 8 percent at the Air Force Academy.

Honor System Due Process Provisions

Based on a review of the rules and procedures governing the honor system and the views of academy officials, we assessed whether and how the honor system at each academy provided the various due process elements. Table 2.3 lists the due process elements and summarizes the results of our assessment. In general, the academies are fairly similar with regard to the due process protections their honor systems provide students. Overall, more than half of the due process rights are provided for in full by the academy honor systems, while there are limitations or qualifications on the extent to which the others are provided.

Table 2.3: Due Process Elements in the Academy Honor Systems

Element	Military Academy	Naval Academy	Air Force Academy
Right to adequate notice	Yes, 7 days' minimum notice..	Yes, 3 working days' minimum notice.	Yes, 2 working days' minimum notice.
Right to an open hearing	Open to DOD personnel, cadets, and family.	Not open to family or nonacademy friends.	Open only to cadets and academy faculty/staff, unless accused elects to have it closed.
Right to an impartial tribunal	Yes.	Yes.	Yes.
Right to present argument	Yes.	Yes, but making a statement can result in loss of right to remain silent.	Yes.
Right to present and cross-examine witnesses	Yes.	Yes.	Yes.
Right to know opposing evidence	Yes.	Yes.	Yes.
Right to representation by counsel	Limited to advice outside the hearing.	Limited to advice outside the hearing.	Limited to advice outside the hearing.
Right to have decisions based solely on the evidence presented	Yes.	Yes.	Yes.
Right to a complete record of the proceedings, including the rationale for the verdict	Partial. While a transcript is provided, it does not address the rationale for the verdict.	Partial. While a transcript is provided, it does not address the rationale for the verdict.	Partial. While an audio tape copy of the Wing Honor Board proceedings is available, it does not address the rationale for the verdict.
Right to an independent appellate review	Partial. The case file is reviewed by the Staff Judge Advocate, the Commandant, and the Superintendent.	No. Reviews of the case file are for procedural errors and errors of fact, not an independent assessment.	Partial. The Superintendent and the Academy Board review the case file.
Right to remain silent	Yes, after being accused.	Yes, after being accused.	Yes, after being accused.
Right to have involuntary confessions excluded	No.	No.	No.

Right to Adequate Notice

The minimum amount of notice required to be provided to a student being charged with an honor offense varies from 2 working days at the Air Force Academy to 7 days at the Military Academy. If an individual has been charged with an honor offense, each academy relieves that person from most other obligations so that he/she can focus on preparing for his/her defense. We found no indications in any of the cases we reviewed or in any of the interviews with attorneys that students did not have adequate time to prepare their defense. Also, each academy indicated that students can request more time if needed.

Right to an Open Hearing

This element helps to ensure the fairness of hearings by subjecting them to outside scrutiny. In the case of honor hearings, the academies recognize an accused's right to privacy. At all three academies, hearings are closed to the public at large.

The Military Academy allows DOD personnel with official interest in the proceeding, cadets, and family to be present during the hearing. The Commandant has the discretion to allow others to observe if their attendance would not have an adverse effect on the fairness and dignity of the hearing or the cadet's right to privacy. The accused's attorney may be present during the entire hearing but must sit in the observer section and not represent the accused.

At the Naval Academy, the hearing is not open to family or friends. Military and civilian personnel with ties to the Academy may observe hearings at the discretion of the presiding officer. The accused's attorney is not allowed to attend the hearing, even as an observer.

The Air Force Academy allows an accused to elect to have the hearing closed to observers. If closed, the accused may have his/her Air Officer Commanding[10] present. If the hearing is open, cadets and academy faculty and staff may attend, and the accused's attorney is allowed to attend the hearing as an observer. Family and nonacademy friends are not allowed to attend.

Right to an Impartial Tribunal

Each of the academies has procedures aimed at ensuring that honor board members will be unbiased by prior knowledge, a close or antagonistic relationship with either the accused or a key witness, disposition, or

[10]Each of the academies has assigned commissioned officers to directly oversee the students in each company or squadron. These officers are called Tactical Officers at the Military Academy, Company Officers at the Naval Academy, and Air Officers Commanding at the Air Force Academy.

belief. One of these procedures involves drawing board members from across the academy. In addition, each academy requires board members to recuse themselves if they feel that they cannot be impartial. While none of the academies allows "preemptory" challenges, each stated it considers any challenges for cause.

Right to Present Argument

Each of the academies allows an accused to make statements and present evidence. At the Military Academy, a hearing is usually recessed before final argument to allow an accused to prepare a closing statement. The accused may seek the advice of counsel in preparing the statement. At the Air Force Academy, an accused may request a recess to consult with counsel before making a closing statement.

A midshipman accused of an honor offense at the Naval Academy has the right to make an oral or written statement before the honor board. However, if an accused makes such a statement, the honor board members may ask questions on the issues raised. Failure to respond to any questions may result in the instruction from the presiding officer that the board not consider the accused's statement.

Defense attorneys who have assisted accused students stated that the right to present argument is, in effect, somewhat qualified since students are not particularly skilled at presenting argument and are sometimes too emotionally involved to be able to make a cohesive and convincing case. Although the defense attorneys acknowledge that they are allowed to advise an accused in preparing for the hearing and during recesses, they believe their effectiveness is hindered because they cannot hear the testimony and present questions and argument firsthand.

Right to Present and Cross-Examine Witnesses

Each of the academies allows an accused student to present and question witnesses, directly or indirectly. Character witnesses, however, are generally not allowed. At the Air Force Academy, the accused's questions are asked through the Group Honor Chairperson, while at the Military and Naval academies the accused student questions and cross-examines witnesses directly.

Defense attorneys raised questions regarding the efficacy of students in cross-examining witnesses. The concerns they raised are that students

- are too closely involved to question witnesses effectively;

- are not skilled at quickly analyzing the answers they receive and asking effective follow-up questions;
- are sometimes intimidated when the witness is a commissioned officer; and
- often try to imitate lawyers they have seen on television and in movies, and they are generally not effective at doing this.

One defense attorney discouraged students from cross-examining witnesses because it usually hurt them more than it helped. Another referred to the right to cross-examine as a "hollow" right since the accused students did it so poorly.

Right to Know Opposing Evidence

While there is no formal "discovery" process, an accused is generally provided with copies of all statements and access to all evidence gathered in the honor investigation. An accused is free to gather additional evidence and obtain statements.

One of the defense attorneys stated that he had encountered a problem with regard to access to all evidence when several accused students were involved. To protect the privacy of all of the accused students, each of the accused was given access only to the evidence and statements that were judged by academy authorities to be directly relevant to that individual's case. In addition, some of the evidence that was provided was heavily redacted with the names and statements of other involved students removed. This raised a concern among the defense attorneys that some potentially exculpatory information may not come to the attention of the accused. Additionally, a concern was raised about delays in getting access to the evidence and official investigation reports.

Right to Representation by Counsel

Each academy informs students accused of honor violations that they have a right to consult legal counsel and, as noted earlier, each provides attorneys to advise students free of charge. In addition, students may engage outside counsel at their own expense.

The academies base their honor system proceedings on an administrative (or nonadversary) model. The nonadversary model involves the decisionmaker (who may be a judge or a board) learning about the case from an investigator, who is supposed to be neutral and present all aspects of the case. The decisionmaker tends to play a more active role in questioning witnesses. The investigator is not expected to act in a partisan

manner or as a prosecutor. The defendant is expected to represent himself/herself. The adversary model, on the other hand, involves the decisionmaker learning about the case from the presentations of adversarial advocates, one representing the interests of the plaintiff or prosecution and one representing the interests of the defendant. Each advocate attempts to present facts that are favorable to the side he/she represents and may oppose each other's presentations through questioning and rebuttal. The decisionmaker generally plays a relatively passive role in the questioning and witness examining processes, which is conducted primarily by the advocates. This is the model used in civil and criminal trials and in courts-martial.

In the academies' honor hearings, the role of legal counsel is limited to providing advice. Counsel is not allowed to represent or speak for the accused during the honor hearing or any of the reviews that may follow a finding of guilt. The reasons cited by the academies for not allowing legal counsel to speak for the accused include

- there is no prosecutor or government counsel presenting a case to the board;
- students would resent the intrusion of attorneys into their honor system;
- allowing the accused to be represented by counsel would likely lead to pressure for an attorney to represent the government's interests;
- hearings would become too legalistic and cause lengthy delays and increased processing time; and
- legal discussion of objections, evidence, and case law could confuse or intimidate the board.

Defense attorneys raise the old adage, "He who represents himself has a fool for a client." They believe that calling the hearings "nonadversarial" is window dressing and that contested hearings are very confrontational. According to one defense attorney, there is no situation more adversarial than when someone's honor and character are called into question and, given the potentially life-long implications of being found lacking in honor, the accused deserves to be fully represented.

Defense attorneys indicated that, while no one plays the role of prosecutor, the investigator who presents the evidence cannot realistically be considered neutral since the investigator's conclusions about what occurred play a major role in determining whether a board is held and the official charges were drafted by the investigator. Since it is likely that the

investigator believes that a violation has occurred, there is a danger that the investigator might inadvertently communicate that belief to the board.

Right to Have Decisions Based Solely on the Evidence Presented

The honor boards are supposed to consider only the information that is presented at the hearing. There are no formal rules of evidence and any information considered reasonably relevant to the issues in question will typically be allowed.

For the reviews that follow a guilty finding, additional information is considered. Information on the individual's military, academic, and physical performance and conduct record is included in the review package. Each of the academies allows the individual to review and respond to the additional information. In addition, the individual may provide character reference statements for consideration at this stage.

Right to a Complete Record of the Proceedings, Including Findings of Fact and Reasons for the Decision

Each of the academies tape-records honor board hearings. The Naval and Air Force academies use these recordings to provide an individual who is found guilty with a copy of the verbatim transcript. At the Military Academy, an individual is given a nearly verbatim record of the board proceedings.

None of the academies provide the individual with the rationale for the board's decision. Academy officials said that board decisions are the product of the individual votes of the members and that each of them may have had different reasons for the way they voted. Academy officials also stated that this practice of not requiring board members to explain or justify their individual votes is consistent with the way criminal and civil juries operate.

Right to an Independent Appellate Review

A finding of not guilty is not reviewable. Each of the academies has a multistep review process that each guilty verdict automatically undergoes. The review processes are intended to identify whether there were any legal shortcomings that may have worked to the disadvantage of the accused. The commandant or superintendent at each academy can overturn a guilty finding based on legal or procedural errors. In addition, the commandant and superintendent at the Military and Air Force academies are required to independently assess the sufficiency of the evidence supporting the guilty finding. While some of the reviewers may

meet with the accused and others and conduct an informal hearing, they do not conduct a new hearing.

In all cases where the academy recommends separation, the final decision is made by the service secretary. Cases are typically reviewed by the secretary's legal counsel, and the authority to approve or reject the recommendation is generally delegated to an assistant secretary. The secretariat reviews consist of examining the reported findings as presented by academy officials and a statement from the accused. A new hearing is not conducted.

At the Military Academy, the Staff Judge Advocate conducts a legal review of the case. The case then goes to the Special Assistant for Honor, who reviews it and makes recommendations to the Commandant, who, in turn, reviews the case and makes recommendations to the Superintendent.

At the Naval Academy, the Commandant's legal advisor reviews the case file and advises the Commandant with respect to sufficiency of evidence. The Commandant then reviews the case file and holds an informal hearing to determine the disposition of the case. If the Commandant recommends separation, the case file is forwarded to the Superintendent, through the Superintendent's Staff Judge Advocate. A 1994 change to the honor process has limited the scope of the Commandant's and the Superintendent's reviews. Prior to the change, the Commandant and the Superintendent were both required to (1) independently weigh the evidence and judge the credibility of the witnesses, (2) determine contested questions of fact, (3) independently determine if the finding of a violation was established by a preponderance of the evidence of record, (4) approve only those findings that were correct in law or fact, and (5) consider matters in extenuation and mitigation. As a result of the change, the roles of the Commandant and the Superintendent are now limited to (1) reviewing the record and disapproving findings that are clearly erroneous, (2) disapproving findings from an honor board during which a procedural violation occurred that cannot subsequently be remedied, and (3) returning a case to the honor board or a new board to consider newly discovered evidence, in addition to the fourth and fifth responsibilities that were retained. Gone is the language requiring a full, independent review of the case.

At the Air Force Academy, the Commandant reviews the case and recommends sanctions. The 10-member Academy Board reviews all cases when the individual has been recommended for separation.

The academies cite their multilevel review processes as, in effect, constituting independent appellate reviews and point to the fact that verdicts have been overruled at the academy or secretariat levels as proof of independence. However, some defense attorneys question whether the reviews are truly independent. They believe that academy officials are often too deferential to the verdict of the honor boards for fear of arousing the resentment among the student body or charges of favoritism if a guilty verdict is overturned. Our review of some case files found occasional statements in transmittal documents from academy officials in the review chain who, although voicing considerable doubt about a given verdict, indicated they did not want to overturn a student board verdict. However, at each academy we found cases of verdicts being overturned by academy officials.

Right to Remain Silent

Each of the academies provides students suspected of an honor violation with the right to remain silent, once they have been officially charged. This right is protected during an honor investigation by requiring that accused students be informed of the right to remain silent and acknowledge in writing that they have been informed of that right.

The Naval Academy does not grant the right to remain silent before an individual is officially accused of an honor violation. Consequently, a faculty or staff member or another student can question a suspected student about an incident and that student would be expected to respond fully, even if it resulted in that student implicating himself/herself in a conduct or honor violation.

Officials at the Military and Air Force academies indicated that cadets have no obligation to answer questions from other students or faculty members concerning a suspected honor violation. However, should the cadet elect to respond, it is expected that the reponse would be truthful. Air Force Academy officials also stated that a cadet may terminate any interrogation at any point and request legal counsel.

Several defense attorneys stated that granting the right to remain silent only after the decision to file charges has been made essentially nullifies that right because the individual may have already been compelled to admit a violation.

In addition, a defense attorney pointed out that Article 31, UCMJ, forbids anyone subject to UCMJ from compelling any person to incriminate himself

or to answer any question that may tend to incriminate him. Since an honor violation could conceivably be charged as a violation of military law, that attorney indicated that requiring a person to provide a statement prior to an actual charge could itself be a violation of UCMJ.[11]

Defense attorneys also noted that one of the common criticisms of the honor systems is that they have been misused as a way of enforcing other academy regulations by requiring that students either admit to violations of rules and policies or risk escalating the offense into one that carries the potential punishment of separation. Sensitive to this criticism, each academy has identified certain kinds of questions such as "fishing expedition" questions or questions aimed at confirming something that is already apparent (e.g., asking an obviously intoxicated student whether he/she has been drinking) as being inappropriate and trivializing the honor system. However, each academy still requires accused students to answer the questions and to lodge a complaint about the inappropriate question later. A defense attorney indicated that this after-the-fact request for a review did not provide any real protection.

Right to Have Involuntary Confessions Excluded

None of the academies grants students an automatic right to have admissions or statements they may have made before being given the right to remain silent excluded from consideration in the hearing. However, the board hearing officer at the Military Academy, the honor board presiding officer at the Naval Academy, and the Group Honor Chairman or Chief of the Honor and Ethics Division at the Air Force Academy can exclude such statements or other evidence if they believe its use would be inappropriate or unfair.

Additional Honor System Issues

Defense attorneys and others have raised a number of additional criticisms and concerns about the academy honor systems. Among the concerns raised are that honor proceedings lack adequate standards of evidence, honor boards are too dependent upon subjective inferences of intent, students are penalized for conducting a vigorous defense, students have been expelled for trivial acts, honor punishments are sometimes disproportionately severe, and a separate honor system is not needed.

[11]A 1989 study done for the Assistant Superintendent at the Coast Guard Academy concluded that every offense against the Academy's cadet regulations (which are essentially similar to those at the three DOD service academies) could be seen as an offense under UCMJ (as either article 133, conduct unbecoming an officer, or article 134, the General Article, as an offense prejudicial to good order and discipline, or another specific article) and that a cadet therefore had "reasonable cause to apprehend danger that he may incriminate himself by answering questions."

Lack of Formal Evidentiary Procedures

Several defense attorneys mentioned the lack of formal evidentiary procedures as a problem. Because honor boards are considered administrative proceedings, formal rules of evidence are not applied. Defense attorneys said that they have seen hearsay, conjecture, and other forms of questionable evidence presented before honor boards.

A related concern involved sufficiency of evidence. In many honor cases, particularly those involving the charge of lying, defense attorneys said there is relatively little "hard evidence" (such as physical or documentary evidence) that board members can directly examine on their own. Instead, much of the evidence is circumstantial or testimonial in nature—especially with regard to the key issue of intent. They said that this can be particularly problematic in cases involving the word of one person against the word of another, and they expressed concern that students have been found guilty based on nothing other than the testimony of their accuser.[12] Such cases also illustrate the difference between the evidentiary requirements in academy administrative versus military judicial hearings. In a trial for "perjury," the Manual for Courts-Martial states that no one can be convicted of that offense based solely on the testimony of a single witness. Only the Air Force Academy has a policy that states that an accused cadet who denies the charge cannot be convicted based solely on the uncorroborated testimony of another person.

Honor Boards Too Dependent on Subjective Inferences of Intent

As noted earlier, the key factor in determining whether an honor violation has occurred is the inference drawn about the intent of the individual. Defense attorneys questioned whether students in their late teens and early 20s have the maturity of judgment and perspective to make such highly subjective judgments where the consequences can taint an individual for life, noting that it seemed ironic that the honor system was virtually the only area of academy life where academy authorities treated students as though they were responsible adults.

Questions have also been raised about the students' ability to determine who is telling the truth and who is not. Attempts to detect deceit are typically based on the assumption that telling a lie is readable in a person's involuntary physiological responses. In cases where most, if not all, of the evidence is testimonial and circumstantial in nature, achievement of just outcomes is highly dependent upon the board's ability to determine who is telling the truth.

[12]In one Naval Academy honor case we examined, a midshipman who denied lying was found guilty solely on the uncorroborated testimony of his accuser.

Ekman and O'Sullivan (1991)[13] recently reviewed the research literature on the ability of people to detect lying. They concluded that 20 years of research in this area indicates that little confidence should be placed in judgments, by laymen or experts, about whether someone is lying or telling the truth. Over all the studies, the average accuracy in detecting deceit has rarely been above 60 percent (with chance being 50 percent), and college students have tended to do worse than others, sometimes choosing less accurately than chance.

Students Are Penalized for Conducting a Vigorous Defense

One defense attorney stated that accused students were, in effect, penalized for conducting a vigorous defense[14] and trying to prove their innocence. This reportedly occurs because academy officials tend to take the admission of guilt and the expression to willingness to accept the consequences as the primary evidence of remorse and commitment to live honorably. This sets up the ironic situation where, given the same circumstances, a guilty person is more likely to be retained at the academy than an innocent person. The reason for this is that an innocent person with a high sense of honor would probably be unwilling to falsely admit guilt and claim to have learned a lesson from the incident, which would tend to be interpreted by academy officials as lack of remorse. The guilty person, on the other hand, would probably be more willing to make such an act of contrition, especially if he/she were not really sincere.

Our review of the documents in honor case files indicated that inferences about the remorse of the convicted person is an important factor in determining the recommendations of academy officials regarding the disposition of the case. Also, many of the recommendations in the files stated that the continued insistence that the accused did not intentionally commit an honor violation was an indication of lack of remorse.

Students Have Been Expelled for Trivial Offenses

One criticism of the honor systems is that they make no distinctions among offenses by degrees of seriousness. Critics point out that students have been found guilty and expelled from the academies for trivial offenses. In a 1974 book, a former West Point psychiatrist cited cadets being forced to resign or expelled for honor offenses such as quibbling over status as a nonvirgin, telling a squad leader that shoes were shined

[13]Ekman, P. and O'Sullivan, M. (1991). "Who can catch a Liar?" American Psychologist, 46: 913-920.

[14]Academy officials stated that a vigorous defense reduces the probability of an adverse decision against those innocent of allegations. Officials also pointed out that their review of cases showed a vigorous defense to be the rule, rather than the exception.

4 hours before inspection rather than the night before, falsely claiming to own a Jaguar, and falsely telling other cadets his cookies were gone when he still had some left.[15]

The Severity of Some Honor Punishments Exceeds the Severity of the Offense

One defense attorney noted that some punishments appear disproportionate to the offense, particularly when one looks at punishments across adjudicatory systems. We were referred to the following two Naval Academy cases that were adjudicated in the same year by the same academy officials.

One case involved the honor system. A plebe (freshman) was being questioned while serving noon meal to the upperclass midshipmen at his table. An upperclassman asked him what he had done over the weekend to improve his physical fitness. Although under no obligation to have engaged in physical conditioning, the plebe answered that he had gone running on Sunday. In response to follow-up questions, he cited where and when he had run. He then asked to discuss it later with the questioner. When his request was denied, he stated that he had answered incorrectly and that he had not been running. He was charged with the honor offense of lying, was found guilty, and was separated from the academy.

The other case involved the conduct system. Several midshipman went to a Navy athletic contest at another university. They had been drinking prior to the game at the home of one of their classmates. After the game, one of the midshipmen (a sophomore) physically struck a woman in a wheelchair in a university dormitory. He was picked up by campus police and later released into the custody of several classmates. He then went into the local community where he encountered a 12-year old girl who was babysitting for her next-door neighbor. He began to curse and verbally abuse the girl, and he struck the girl's mother when she told him to leave. He then attempted to follow the girl into the house where she was babysitting. He broke into the house by kicking in a plate glass exterior door. Once inside, he broke several windows and was found passed out on the floor by the police and arrested. He was found guilty of five conduct offenses at the highest level of seriousness and a lesser offense of underage drinking. He was retained at the Academy.

Separate Honor Board System Is Not Needed

While stating that the services have a legitimate interest in the honesty and integrity of the officer corps, a defense attorney stated that it does not

[15]U'Ren, Richard C., M.D., Ivory Fortress, New York: The Bobbs-Merrill Co., Inc., 1974

necessarily follow that a rigid honor system, imposed only on the academies, is a reasonable way for the services to try to assure the honesty and integrity of the entire corps. He noted that 85 to 90 percent of officers were commissioned through programs that have nothing comparable to the academy honor codes. He noted that the courts used essentially this same line of reasoning in striking down the mandatory chapel attendance requirement that each of the academies used to impose on cadets and midshipmen.[16] He also stated that, since virtually any significant offense under the honor code was also an offense under UCMJ,[17] a separate honor system was not needed.

[16]In Anderson v. Laird, 466 F.2d. 283, 303 (D.C.Cir. 1972), the court stated "The concept of government necessity is undercut by the fact that approximately 95% of the service officers do not graduate from the Academies, and have never been subject to this compulsory chapel requirement."

[17]A similar conclusion was reached in a study conducted by the Coast Guard Academy.

Cadet and Midshipman Perceptions and Attitudes Regarding the Honor System

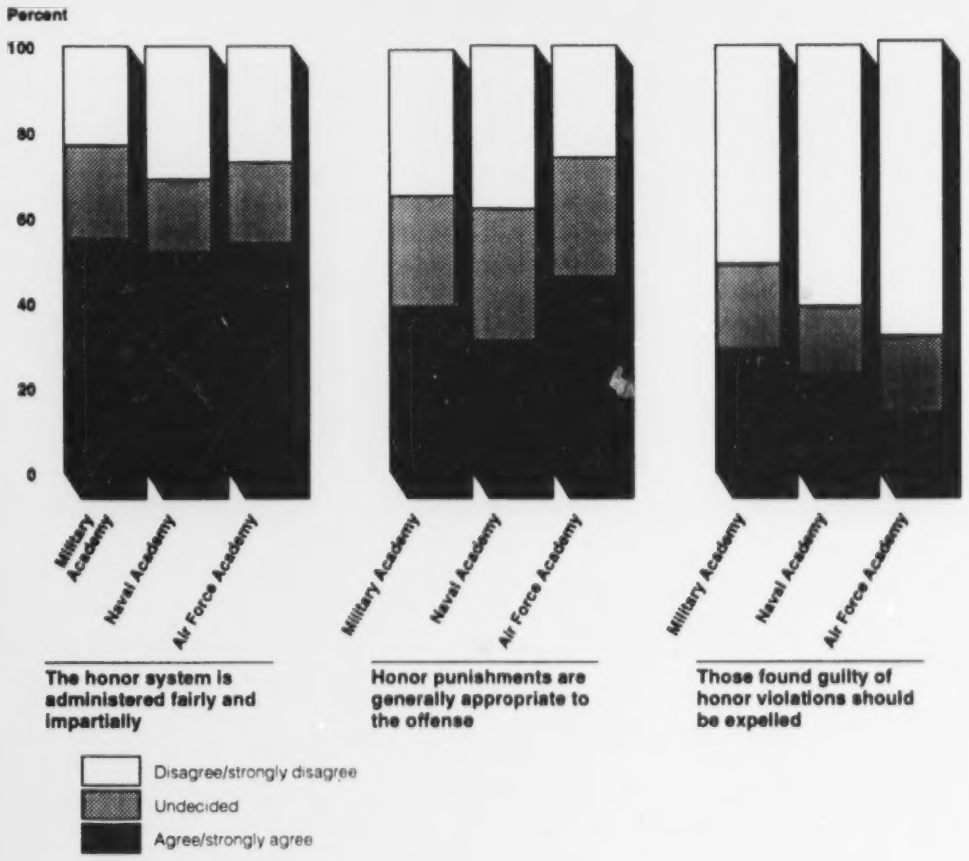
Our 1994 survey of students at the three academies found that they generally saw their honor systems as fair. Determination of what constitutes an honor violation is not as straightforward as the wording of the codes implies. It is unclear what is or is not an honor violation since an individual's intent is the key determining factor. Some students see honor as "black or white" while others see gradations. Also, there is some confusion regarding whether some acts are honor violations or conduct violations. Some students see the demands of the honor system as conflicting with personal loyalty. Many students at each academy are reluctant to report honor violations. Students also perceive that the honor standard is higher at the academies than it is among active duty officers. Over their 4-year academy careers, student views toward honor appear to become less positive.

Students Generally Saw the Honor Systems as Fair

Several questions assessed the perceptions of cadets and midshipmen regarding the fairness of the honor system. Overall, academy students saw the system as reasonably fair. However, a considerable proportion saw a need for officer involvement and adherence to due process protections, and most did not believe that all violators should be expelled. In addition, many students indicated some concerns about the honor system being used to enforce regulations and as an easy way to remove someone from the academy.

As shown in figure 3.1, more than half of the students at each academy believed that the honor system was administered fairly and impartially. However, a sizeable minority of 23 to 31 percent disagreed. The students were split concerning whether honor violation punishments were generally appropriate to the offense. From the wording of the question, it is not possible to determine whether those who did not see honor punishments as appropriate believed them to be too harsh or too lenient. However, responses to another question on punishments indicated that most students did not want to see the harshest punishment (dismissal) imposed for every honor violation. When asked whether anyone found to have committed an honor violation should be expelled, only 14 to 29 percent agreed while 51 to 69 percent disagreed.

Figure 3.1: Student Perceptions of the Honor System Fairness



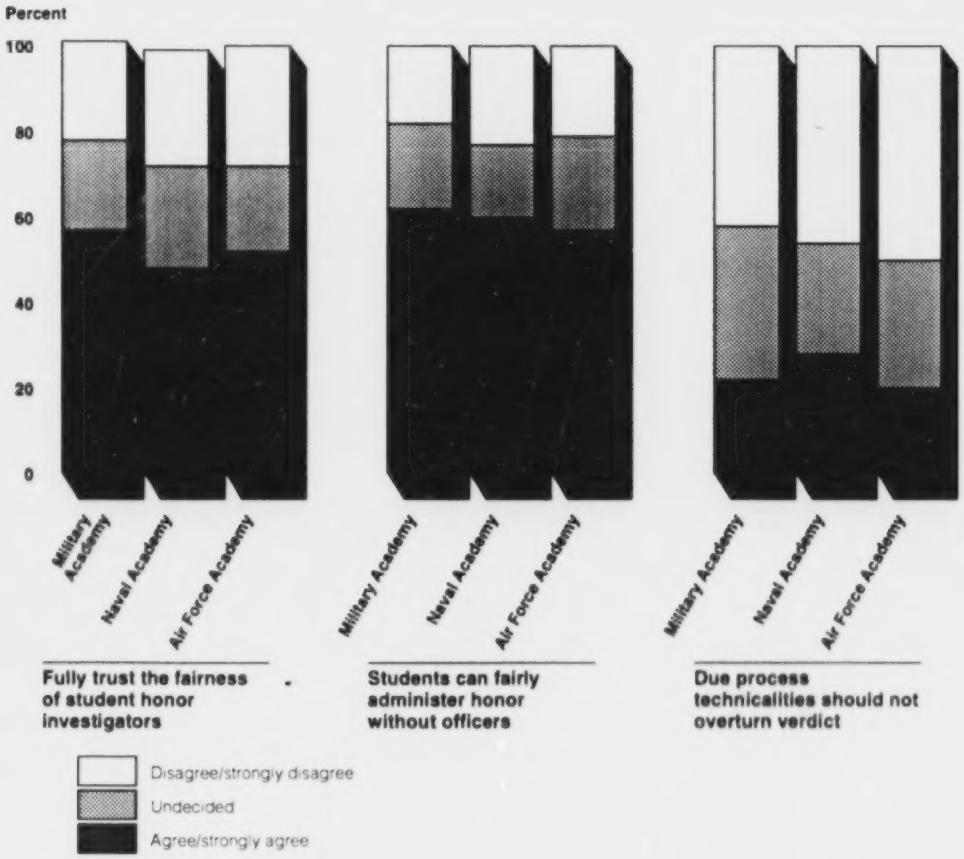
Source: Responses to GAO questionnaires.

We also asked several questions aimed at assessing whether respondents trusted the largely student-run process (see fig. 3.2). While most of the students at each academy indicated they trusted the student investigators and that the students were capable of fairly administering the honor

system without the involvement of officers, there was a significant minority (18 to 28 percent) who did not fully trust the student investigators and saw officer involvement as needed. Although most students trusted the system, they were generally unwilling to forego due process protections, with 42 to 50 percent of the students at each academy indicating those protections were more than just legal technicalities and should apply in disenrollment decisions. As a Naval Academy student responded,

"I feel our honor code can not be held higher than the U.S. Constitution. All midshipmen still maintain their American rights."

Figure 3.2: Student Trust in the Honor System



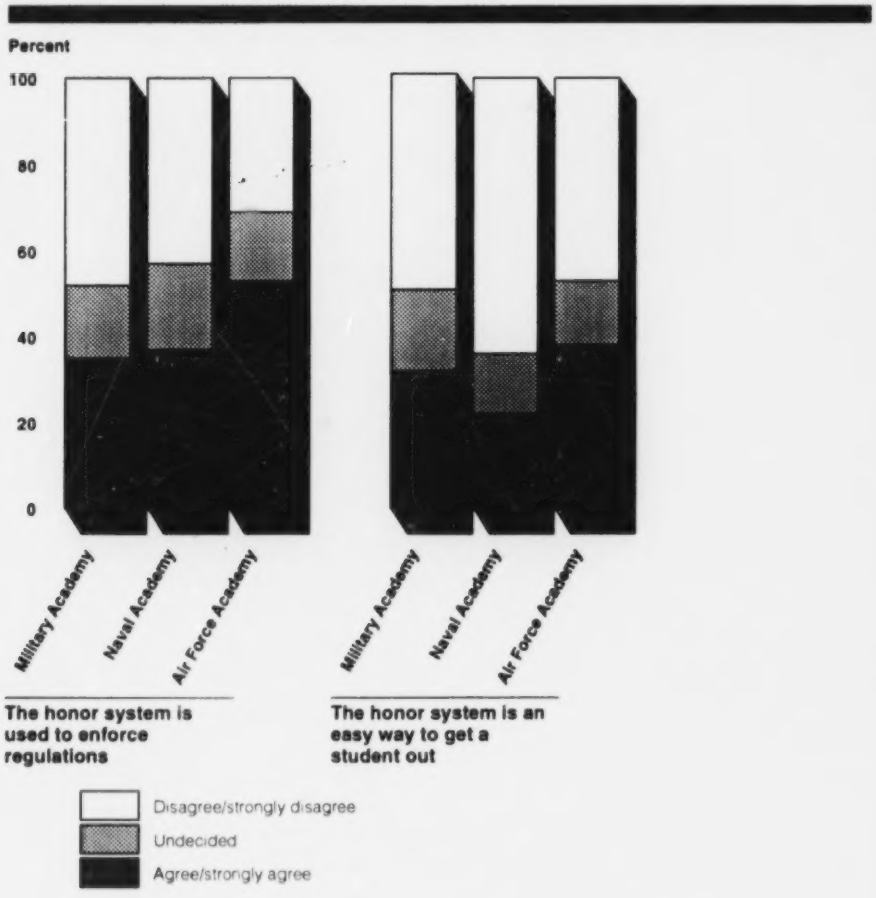
Source: Responses to GAO questionnaires

We asked some questions concerning criticisms that have been raised over the years about potential misuse of the honor system (see fig. 3.3). One such criticism involves use of the honor system as a tool to enforce regulations. This issue entails using the person's honor against him/her by

asking an improper question that puts a student in a position where he or she must either admit to some conduct violation or commit an honor violation. For example, if an officer heard a rumor that a student had been off-post without authorization and then asked that student whether the rumor was true, the officer would be using honor to enforce conduct regulations by forcing the student to either admit to a conduct offense or risk an honor offense. The academies have recognized this as a potential problem that could trivialize the honor system, and each has included a discussion of improper questioning in the guidance governing the honor system. Over half the students at the Air Force Academy and over one-third at each of the other two academies perceived that honor was used to enforce regulations.

Another concern is that the honor systems can be misused as an expedient way of removing students who are seen as not fitting in. While about half or more of the students at each academy indicated a belief that the honor system was not an easy way to get a cadet/midshipman out of the academy, from 22 to 38 percent disagreed.

Figure 3.3: Student Perceptions of Misuse of Honor System



Source: Responses to GAO questionnaires

Honor Codes/Concept Are Not as Straightforward as They Appear

While the honor codes/concept appear to be simple and straightforward in their wording, in actual practice, determination of whether or not an honor offense has been committed is much more subjective and greatly depends upon what inferences are drawn concerning the intent of the cadet/midshipman in question.

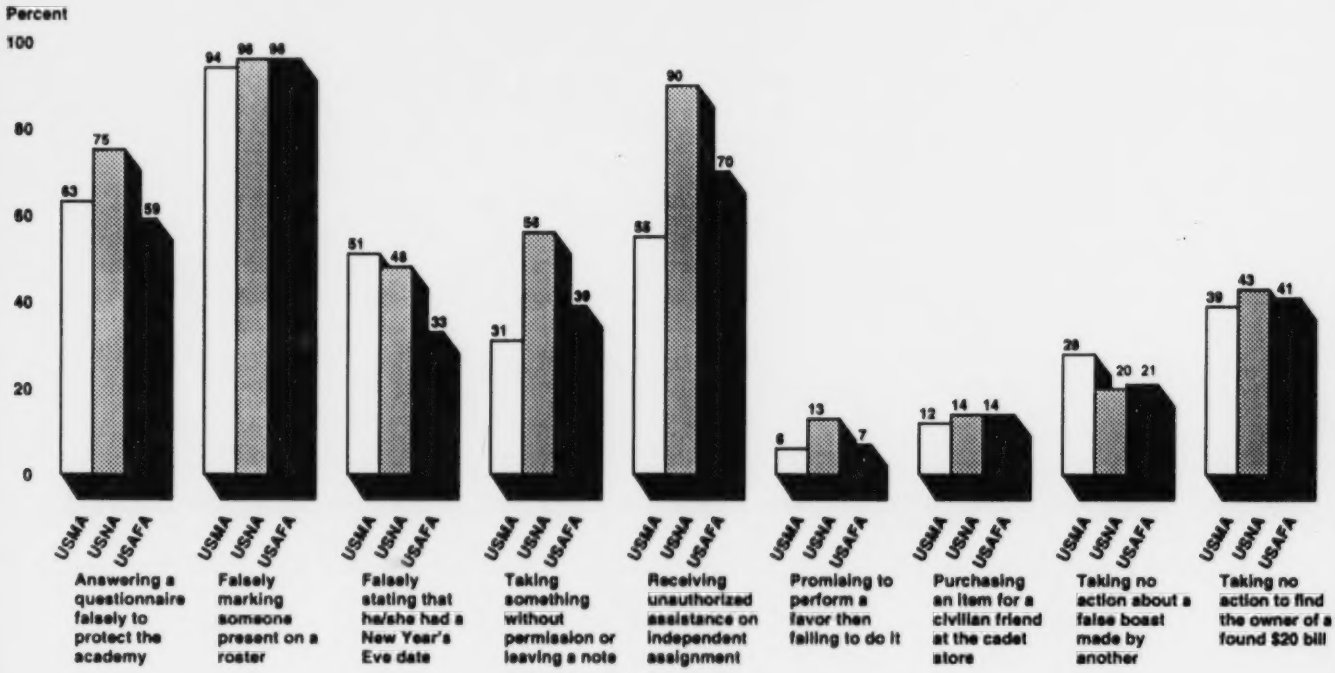
We developed a set of 27 short scenarios to determine the extent of agreement regarding what was or was not considered an honor violation. The scenarios dealt with all three aspects of the honor codes/concept (lying, cheating, and stealing). Some scenarios were derived from actual honor case situations while others were hypothetical. The scenarios were intentionally focused on "grey area" situations. We also included a couple of scenarios that we knew, based upon advice from academy officials, were not honor violations.

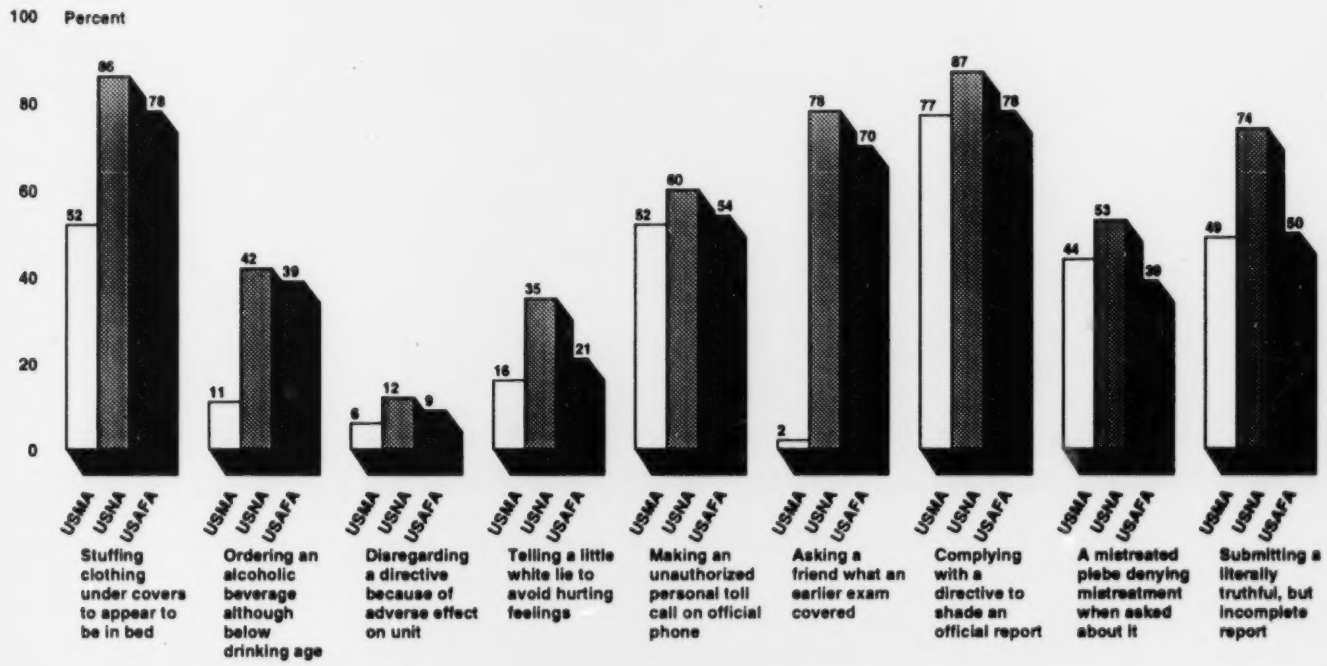
The officials at each academy who were responsible for the honor programs assessed each of the scenarios regarding whether it was likely to constitute an honor violation. The 27 scenarios and the assessments across the three academies are shown in appendix III. Allowing for the absence of sufficient information in some of the scenarios to allow definitive determination of the individual's intent and the subjectivity inherent in such determinations, there appeared to be at least some differences among the academies regarding whether specific acts were violations of their honor systems. In some cases, a given act (such as taking a joyride in a government vehicle) was considered by academy officials to be a conduct violation rather than an honor offense. Other differences were the result of specific academy policies. For example, the Military Academy has a policy that instructors not give the same exam to different class sessions, which makes it permissible to ask a friend what was on the exam.

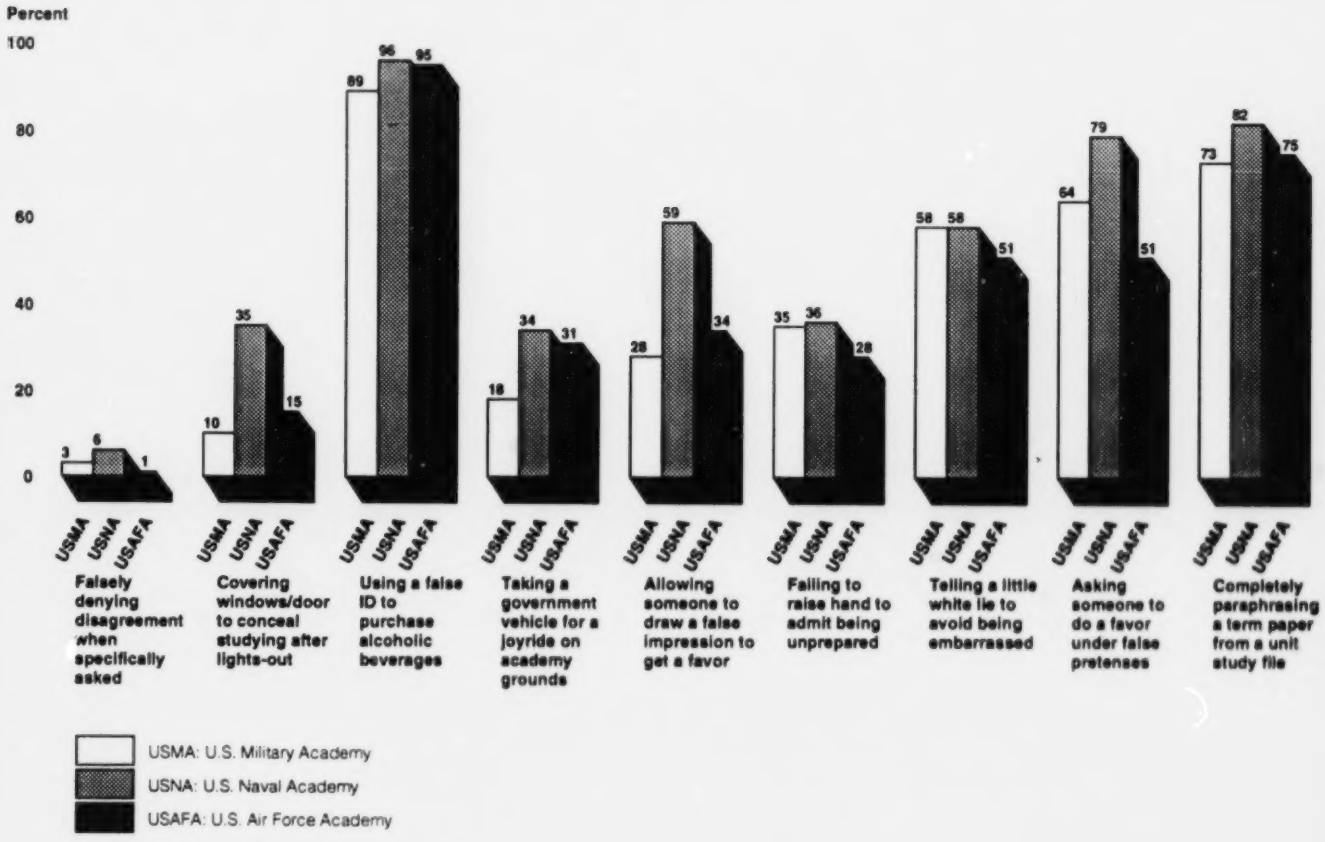
Figure 3.4 shows the percentage of students at each academy who indicated that a specific scenario[1] was either definitely or probably an honor violation. As can be seen, there is little agreement among the students at each academy with regard to what does or does not constitute an honor violation.

[1]The text of the items was abbreviated for use in the figure. See appendix III for the full text of the items.

Figure 3.4: Student Views Regarding Whether Specific Acts Were Honor Violations




100
Percent
80
60
40
20
0
USMA
USNA
USAFA
52
86
78
Stuffing clothing under covers to appear to be in bed
11
42
39
Ordering an alcoholic beverage although below drinking age
6
12
9
Disregarding a directive because of adverse effect on unit
16
35
21
Telling a little white lie to avoid hurting feelings
52
60
54
Making an unauthorized personal toll call on official phone
2
78
70
Asking a friend what an earlier exam covered
77
87
78
Complying with a directive to shade an official report
44
53
39
A mistreated plebe denying mistreatment when asked about it
49
74
50
Submitting a literally truthful, but incomplete report



Source: Responses to GAO questionnaires.

Many Cadets/Midshipmen See Honor as "Black or White" While Many Others See Gradations

While the honor codes/concept are stated in absolute terms (i.e., any act of lying, cheating, or stealing is a violation), many academy students see honor not as a matter of "black or white," but as varying "shades of grey." This is not a new issue. In a 1973 book, Galloway and Johnson wrote:

"The absolute nature of the system makes it difficult for graduates to differentiate between insignificant moral problems and those of great moment, for within their frame of reference it is the form of the situation which matters. Ethical acumen is discouraged

where honor and integrity are defined in clear-cut, black-or-white terms. As the cadets are told at their orientation talks, honor is like virginity—you've either got it or you don't".[2]

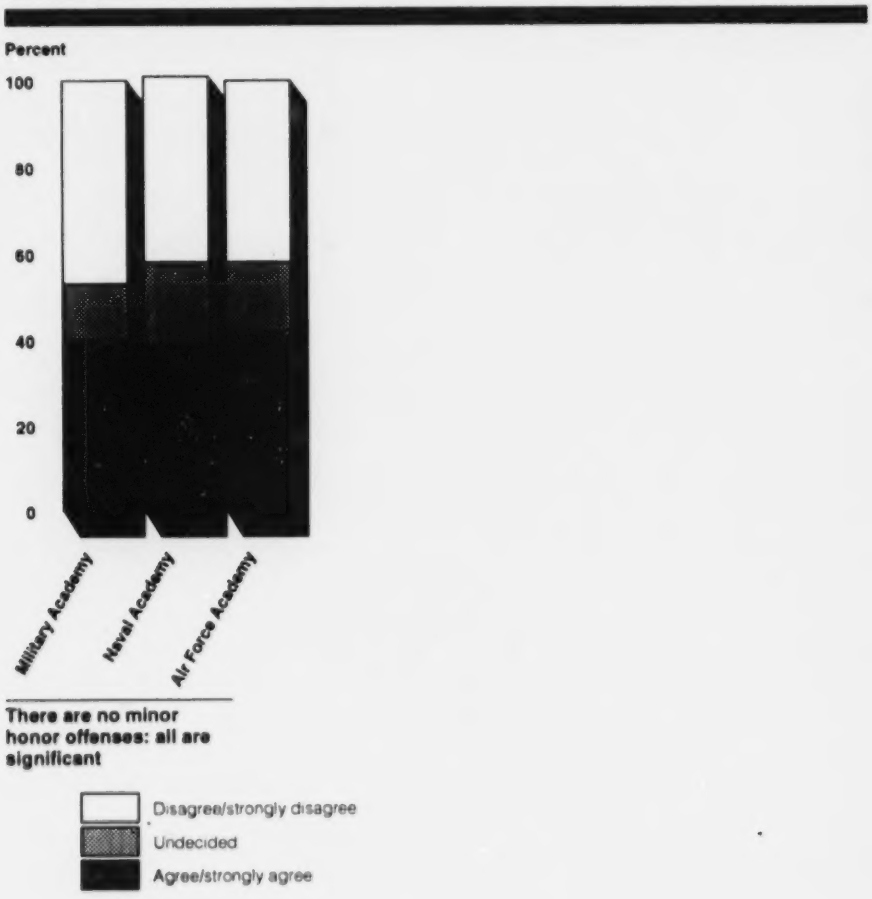
Academy students were basically split with regard to whether all honor offenses were equally serious (see fig. 3.5). About 40 percent at each academy indicated that any violation of the honor code/concept was significant, while about 40 percent saw some honor violations as less serious than other violations. Example comments follow.

"There are no 'LITTLE WHITE' LIES SIR." (Naval Academy midshipman)

"I think your questions on honor situations contain too many black and white answers. Honor is not clean cut." (Air Force Academy cadet)

[2]Galloway, K. B. and Johnson, R.B. Jr., West Point: America's Power Fraternity, New York: Simon and Schuster, 1973, pp. 109-110.

Figure 3.5: Student Views Regarding Whether All Honor Offenses Are Equally Serious



Source: Responses to GAO quesionnaires

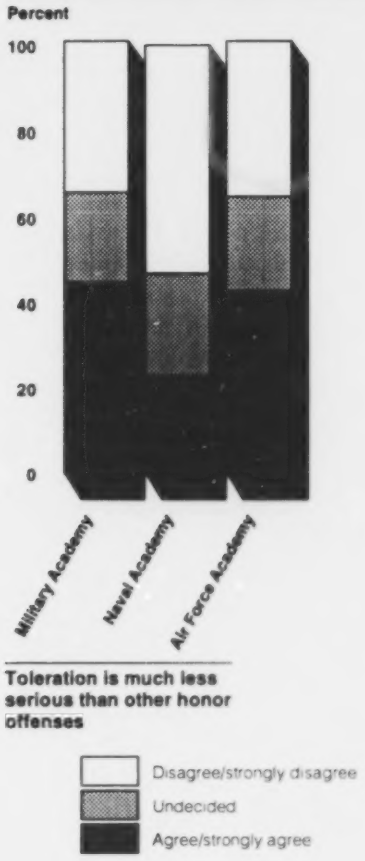
The scenario items offer some clues regarding what kinds of acts are more likely to be seen as violations.

- Deceptive acts involving official reporting or accountability issues (such as falsifying a roster, shading a report, or using a false identification) had a higher percentage of respondents indicating it was an honor violation than acts that involved only personal issues (e.g., lying about having a date).

- A lie told to benefit the teller or take advantage of someone was more likely to be seen as an honor violation than if it was told to benefit someone else.
- Scenarios that involved gaining an unfair academic advantage (e.g., getting unauthorized help on a homework assignment) were likely to be seen as honor violations.
- Scenarios involving direct verbalized deception were more likely to be seen as honor violations than were scenarios in which the deception was indirect or implied, but not verbalized. For example, while a cadet/midshipman who is below the legal drinking age and who orders an alcoholic beverage could be seen by some as falsely implying that he/she is entitled to be served, as long as the individual did not verbally claim to be of age or present a false identification, many respondents saw no honor violation.

Many academy students (from 23 percent at the Naval Academy to over 40 percent at the other two academies) saw toleration of an honor offense as much less serious than other offenses (see fig. 3.6). Toleration was more likely to be seen as a less serious offense at the two academies with a non-toleration clause than it was at the Naval Academy where toleration is a conduct offense, not an honor offense.

Figure 3.6: Student Views on the Seriousness of Toleration



Source: Responses to GAO questionnaires

Write-in comments indicated that the toleration issue caused considerable consternation among students. For example,

"The toleration clause of the honor code is only teaching us to be little tattle tales. Sounds childish, but we are treated like children, so it fits." (Military Academy cadet)

"The problem with the honor code itself is not the code—it is the way the toleration clause is enforced. There is no leeway for a cadet to confront another cadet about

something—counsel them and leave it at that. If a friend of mine makes a dumb mistake—by regulation I have to turn him in. I can't talk to him and solve the problem from there. Everything has to go to a board. I think that's wrong and rather than admit I saw or witnessed a violation by counseling the person myself, I'm not going to run the risk of getting a toleration hit and I'm going to pretend I never knew a thing." (Air Force Academy cadet)

The Individual's Intent Is the Key Determining Factor

The set of honor scenario items generated extensive write-in comments from the respondents. Most of these comments indicated that the scenarios did not provide enough information to make a definitive assessment of the individual's intent and the respondents questioned the validity of any conclusions based on the scenario questions. Typical examples of the comments follow.

"From what we are taught, honor violations are determined upon the intent of the possible violation. From the questions posed in this questionnaire, we have no information or knowledge of their intent. Its almost presuming guilty before being proven innocent. Only some of the questions are like this. Others gear us to the "right" answer by how they are worded." (Military Academy cadet)

"There are lots of gray areas in several of these questions. The biggest thing I look at before turning someone in is INTENT. Not everything is black and white. Definitely there are actions that are WRONG and should never be covered up but intent is the biggest determinant." (Naval Academy midshipman)

"The answers I have given throughout the survey often depend on situation, intensity, etc. I hope that is taken in to account when these results are reviewed. Each question lacks the specific context that may make the results more accurate or reliable." (Air Force Academy cadet)

We agree that many of the scenario items did not include a specific indication of the person's purpose or intent, but at least half of the items did provide such an indication. We believe, however, that the respondents' comments serve to confirm the conclusion that the determination of what constitutes an honor violation is not clear-cut. Rather, as noted in the previous chapter and stated in many of the comments, determination of an honor offense depends upon the inference that an observer forms regarding the individual's intent. For example, while taking a bed sheet from the laundry to make a "spirit" sign has the effect of a theft on the rightful owner of the sheet, if the "intent" of taking the sheet was seen as a prank then this act would probably not be seen as an honor violation.

Since different individuals can draw different inferences from the same set of observed facts, determination of an honor offense is highly subjective.

Confusion Regarding Whether an Act Is an Honor Violation or Merely a Violation of Regulations

A second common criticism that respondents cited in their write-in comments about our scenarios was that we were apparently confused regarding what constituted an honor violation versus what merely constituted a violation of regulations. For example, several respondents stated that covering room windows and stuffing a towel under the door to avoid detection for violating lights-out policy is a conduct offense. They saw this as an attempt to avoid detection, not as an attempt to deceive authorities into believing that the lights were out.

In reviewing the Naval Academy's serious conduct offenses for the 1990-91 school year, we found more cases involving theft that were dealt with using the conduct system than with the honor system. These cases included

- stealing Logs (the Academy's humor magazine),
- wrongfully appropriating a motor vehicle,
- stealing by making unauthorized credit card phone calls,
- stealing from the Midshipmen's Store,
- stealing property of Citadel cadets,
- stealing Navy property,
- stealing $4.96 in merchandise,
- assisting in transporting and concealing stolen stereo equipment,
- stealing a check and cashing it, and
- stealing money and credit cards from other midshipmen.

In addition, two cases of stealing were handled using court-martial procedures. These cases involved stealing

- a watch, a ring, and cash from the hotel room of a retired Army general and his wife, and
- $1,500 worth of stereo equipment from fellow midshipmen.

During that same period, we found six other cases that were dealt with under the honor system. These cases involved stealing

- a fellow midshipman's weapons project,
- an exam,
- a homework solutions manual,

- money from a wallet,
- a bracelet, and
- 21 library books from the Academy library.

We could find no explanation or criteria for determining whether a given act would be pursued using the honor system, the administrative conduct system, or the military justice system.

The Honor Codes/Concept Are Not Ethics Codes

The honor codes/concept do not prohibit all unethical acts or practices. Some of the respondents acknowledged this in pointing out deficiencies in various scenario questions. For example, we asked about the situation where an academy student used a paper from a study file and, while not copying any of it verbatim, paraphrased it completely. Several respondents wrote comments that whether this would constitute an honor offense depended upon whether the cadet/midshipman in question had cited the use of the study file paper. For example, one Military Academy cadet wrote, "Some underclass cadets might not know the difference between an ethics violation and an honor violation. You must clarify if receiving help or paraphrasing is documented or not."

Some respondents acknowledged that the hypothetical students in some of the scenarios behaved inappropriately, but that did not constitute an honor offense. Examples of comments made by Military Academy cadets follow.

"Regarding the cadet paraphrasing the paper (for example), it would only be an honor violation if he failed to document his source. Otherwise, it is just unoriginal thought that deserves a bad grade."

"Although this [keeping a $20 bill without trying to find who lost it] is not morally correct, the cadet is not required to return the money. However, I feel he/she should make a reasonable attempt at finding the owner and returning said money."

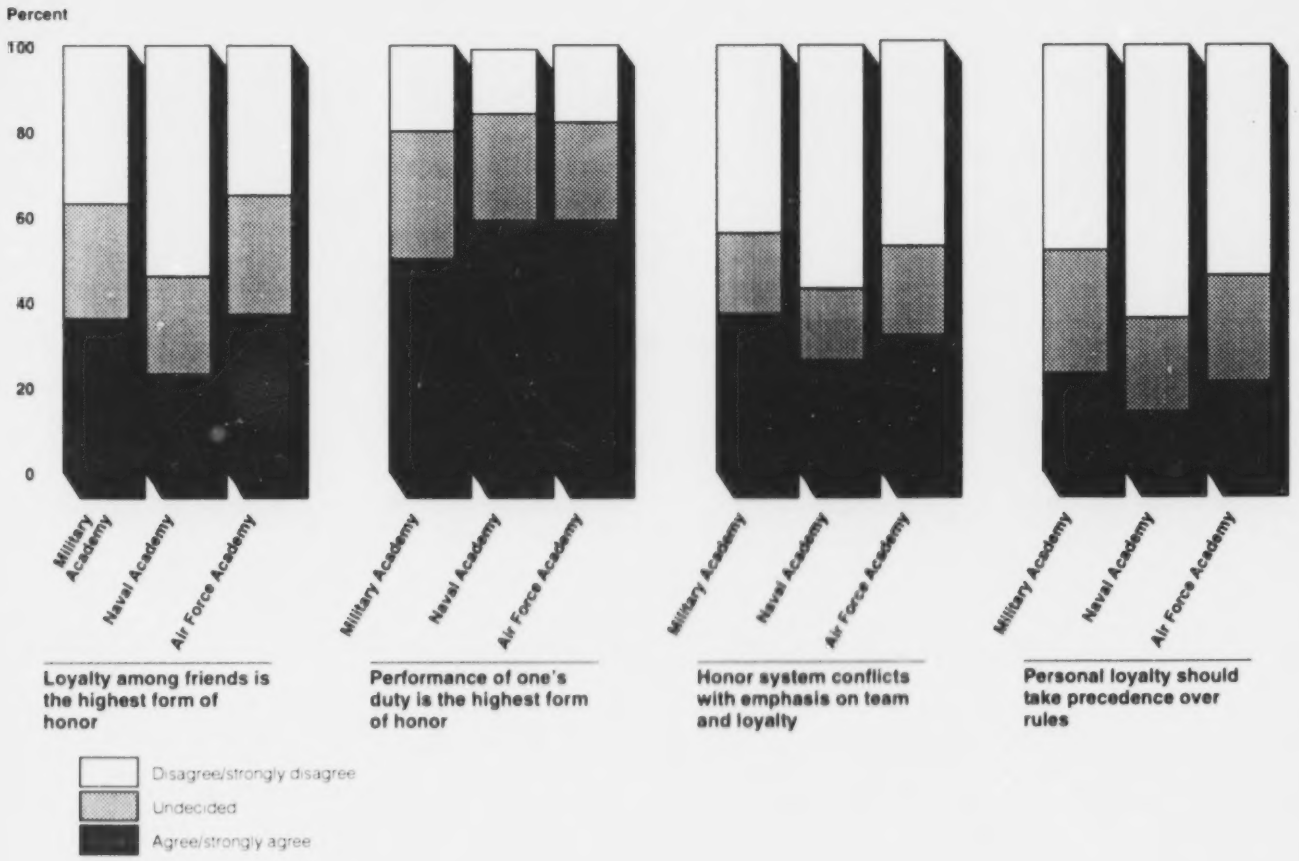
"Most of these [the honor scenarios] are ethical dilemmas, not honor questions."

"Many things listed [in the honor scenarios] would be wrong, possibly unethical, but not an 'honor' violation."

Competing Concepts Regarding What Constitutes Honor

We asked respondents several questions aimed at identifying how they personally defined honor and whether they saw any conflict between the demands of the honor system and loyalty to friends (see fig. 3.7).

Figure 3.7: Student Views Regarding Alternative Concepts of Honor



Source: Responses to GAO questionnaires

Half or more of the students at each academy indicated that duty was the highest form of honor. Also, a sizeable minority of students at each academy indicated that loyalty was the highest form of honor, that the honor system conflicts with the emphasis on being a team player and personal loyalty by requiring students to turn in their fellow students, and that personal loyalty should take preference over rules and regulations.

Write-in comments also indicated that many students perceived a conflict between the demands of the honor system and the obligations of personal loyalty. For example,

"Because of the way I was brought up, it is hard to deal with the Honor Code. I was taught that is was okay to cover up things for friends and many things along those lines. I don't think that is dishonesty." (Military Academy cadet)

"Loyalty to your friends is much more important than enforcing military standards. If you are in a war, shined shoes won't save your ass. Friends will." (Air Force Academy cadet)

"I think the main reason why the Honor Concept may not be applied in some circumstances is that it conflicts with other values learned at the Academy. Teamwork, and personal loyalty are two such values. It is hard to put someone in jeopardy, when one is taught not to 'bilge' [inform on], or backstab, another midshipmen. It is especially hard for classmates to punish one another, as one often views his/her class as one big team or family." (Naval Academy midshipman)

"I would rather have a loyal friend by my side during combat than one who has passed muster at the Naval Academy as being honorable - we are here to lead men in combat and honor has nothing to do with it." (Naval Academy midshipman)

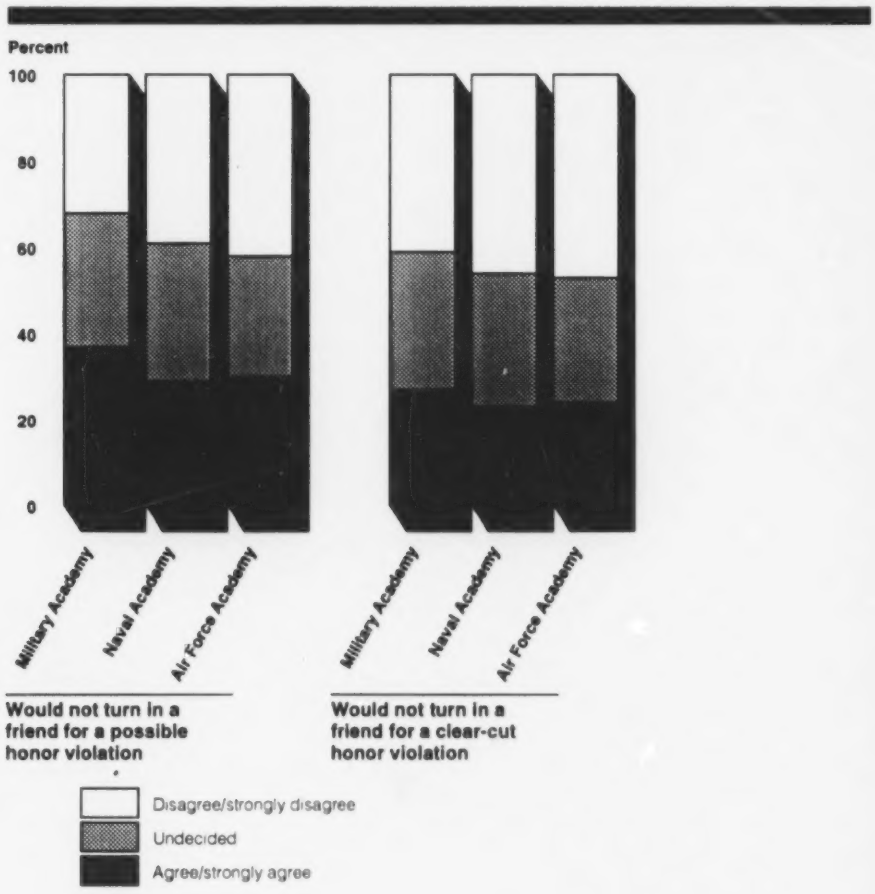
"Many peoples morals are eroded over time while they are here and an unfortunate casualty includes their personal honor. This erosion comes from wanting to be part of the group and putting loyalty to them (team, company) over their personal integrity and standing up for what's 'the right thing to do.' If they do break with the group, they're ostracized. I know, I was one of those." (Naval Academy midshipman)

Many Students Are Reluctant to Report Honor Violations

We asked students several questions aimed at assessing their willingness to report honor violations. The proportion of students indicating they would not turn in a close friend for a possible honor violation was 37 percent at the Military Academy, 30 percent at the Air Force Academy, and 29 percent at the Naval Academy (see fig. 3.8). The responses could mean that students are willing to report honor violations only if they are sure that an honor offense has been committed. However, since about

one-quarter of the students at each academy indicated they would not turn in a close friend for a clear-cut honor violation, it would appear that many students are simply unwilling to report their friends for honor violations.

Figure 3.8: Willingness to Report a Friend for an Honor Violation



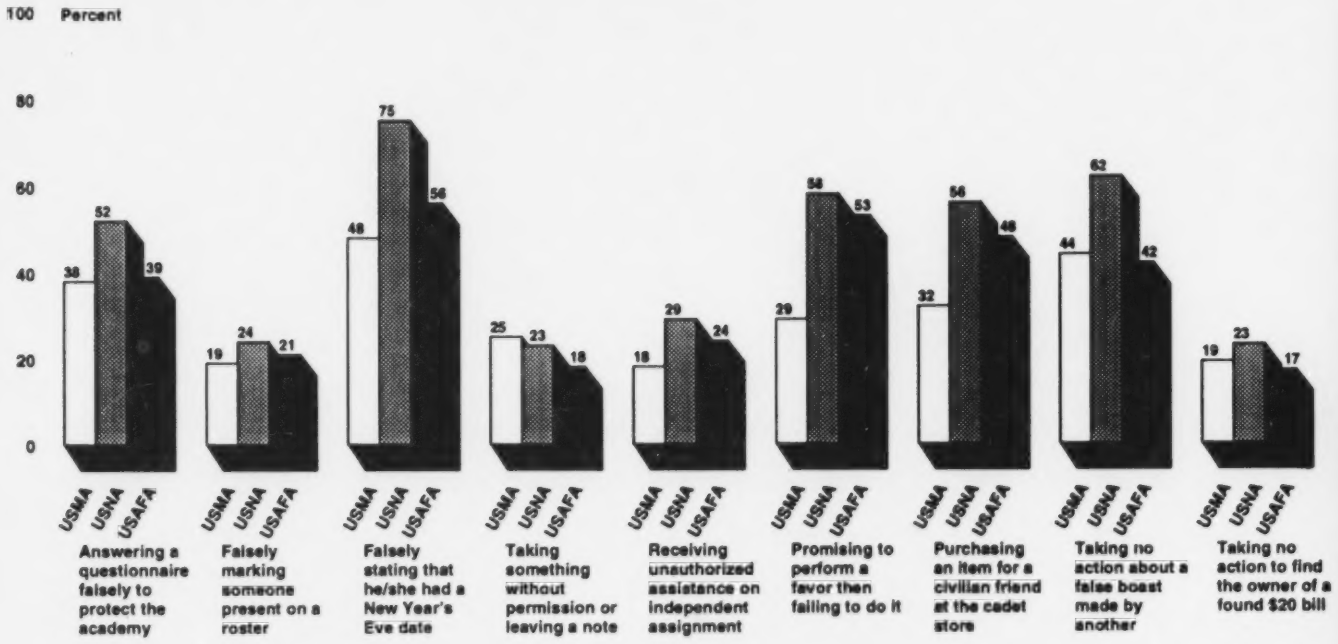
Source: Responses to GAO questionnaires.

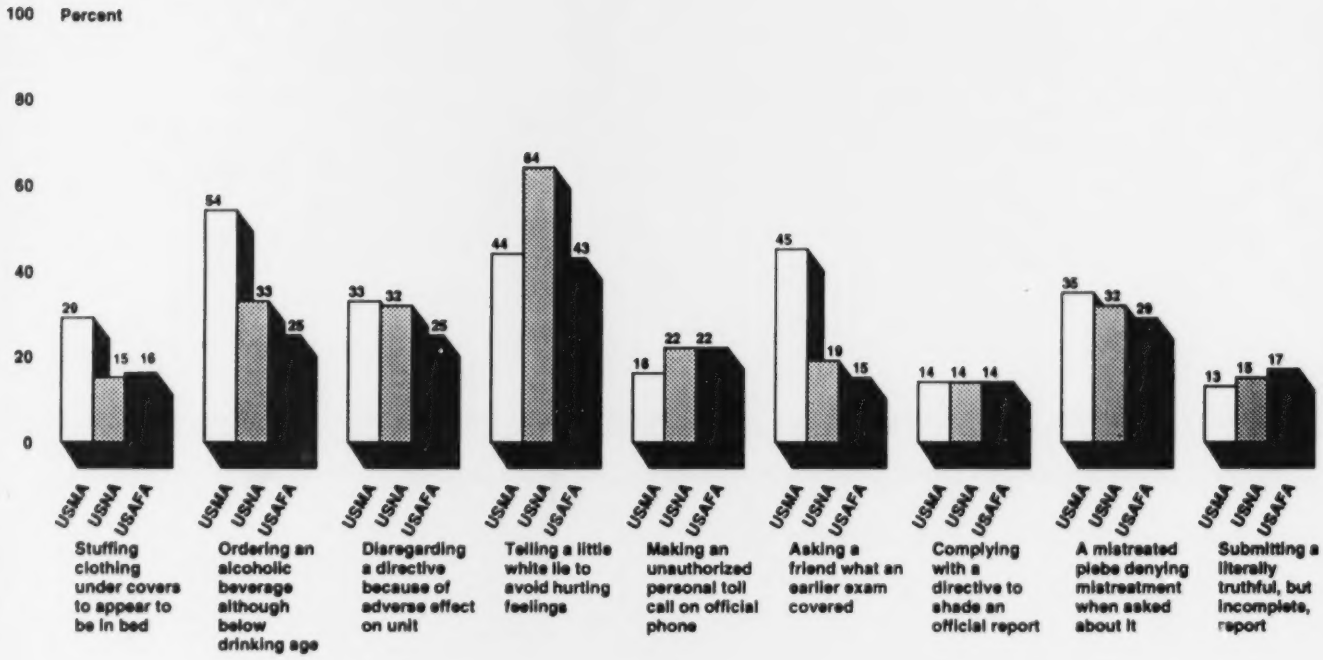
To get another assessment of student willingness to report honor violations, we examined the responses of those students at each academy who thought each scenario either probably or definitely was an honor

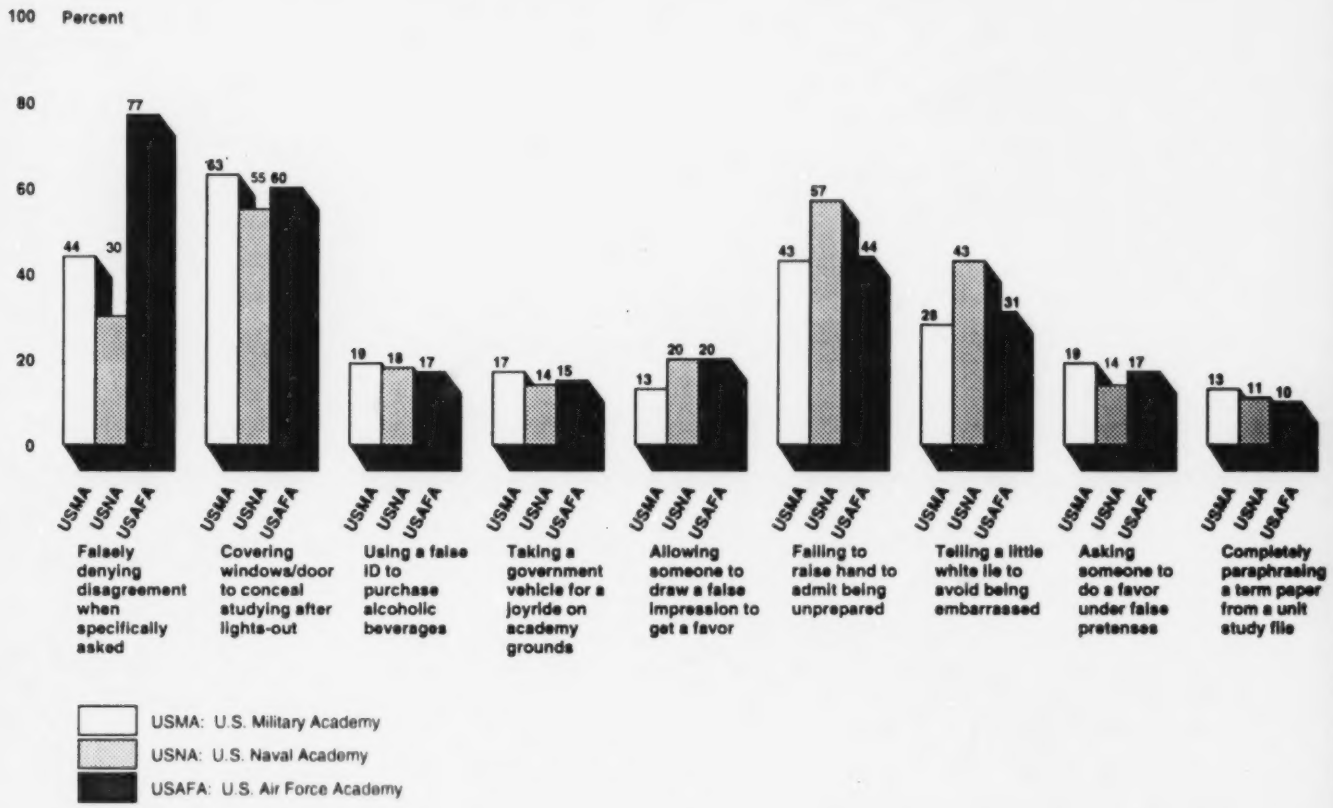
violation. We also asked how likely it was that they would report someone in their unit for a possible honor violation if they had direct knowledge, after approaching for clarification, that the individual had committed the act described in the scenario. Midshipmen's responses do not necessarily mean that the respondent would take no action since the Naval Academy honor system provides a "counsel and not report" option for handling an honor offense. However, since the honor codes at the Military and Air Force academies provide no other option than to report honor offenses, these results raise significant questions regarding student support for the non-toleration clause at these academies.

As shown in figure 3.9, the proportion of students indicating they would probably or definitely not report the individual varied significantly from scenario to scenario, again indicating that many students see different degrees of seriousness depending on the nature of the specific offense. Overall, an average of 30 to 34 percent of those students who saw various scenarios as either probably or definitely constituting an honor offense indicated that they probably or definitely would not report a student in their companies or squadrons.

Figure 3.9: Percentage of Students Who Indicated They Would Definitely Not or Probably Not Report Specific Acts as Honor Violations




100
Percent
80
60
40
20
0
USMA
USNA
USAFA
Stuffing clothing under covers to appear to be in bed
20
15
16
Ordering an alcoholic beverage although below drinking age
54
33
25
Disregarding a directive because of adverse effect on unit
33
32
25
Telling a little white lie to avoid hurting feelings
44
64
43
Making an unauthorized personal toll call on official phone
18
22
22
Asking a friend what an earlier exam covered
45
19
15
Complying with a directive to shade an official report
14
14
14
A mistreated plebe denying mistreatment when asked about it
35
32
29
Submitting a literally truthful, but incomplete, report
13
15
17



Note: This figure only includes those students who indicated that a specific act was probably or definitely an honor offense.

Source: Responses to GAO questionnaires.

Write-in comments indicated that reluctance to turn in peers for honor offenses stems from a variety of reasons, such as loyalty to one's friends, unwillingness to contribute to the destruction of someone's life, belief that almost everyone has violated the code at some point in their academy career, concern that minor violations can result in disproportionate

punishment, and the ostracism that can result from turning in a peer. The following are examples of some of the students' comments.

"I like to think that I'm honorable, but on the same token I cannot envision myself turning in a friend for a violation. I would definitely approach him and discuss it, but I probably wouldn't turn him in." (Naval Academy midshipman)

"The hardest part about the honor code is that turning someone in and ruining their life would be an extremely hard choice to make." (Military Academy cadet)

"We all make good and bad decisions in life. However, to destroy a career over some of the things that happen here probably makes us suffer as a whole in the long run." (Naval Academy midshipman)

"Pertaining to the honor questions, I would never turn in somebody for honor violations because I would not want to be responsible for ending somebody's career. I will always give them a second chance." (Naval Academy midshipman)

"The honor concept really needs to be looked at. If you interview midshipmen, most would tell you that it is strictly adhered to, but it is not. I would seriously doubt anyone graduates without committing some sort of H.O. [honor offense] The H.C. [honor concept] is used as a scare tactic and to keep others under control. Personally I hate it with a passion and would never, ever take part in its proceedings no matter how serious the offense was." (Naval Academy midshipman)

"The problems that many mids [midshipmen] face, including myself, when deciding whether or not to report somebody has to do with what exactly the offense was. I would generally try to counsel first, and only as a last resort would I turn somebody in. However, even then I would be hesitant to do so unless it was a serious honor violation. There are many times when technically something is an honor violation but it is almost ridiculous to report." (Naval Academy midshipman)

"I was part of the people who turned in the EE [electrical engineering] crew. All I got was hardship, pain, and hatred from everyone in the hall. I tell you it was not worth it." (Naval Academy midshipman)

Factors Related to Reluctance to Report Honor Violations

We also looked at the responses to other questionnaire items to see if those who indicated they would report a violation could be distinguished from those who indicated they would not. Reluctance to report was not related to class, gender, race, or ethnic background. We found that students who were less willing to report violations were more likely to do the following.

- Draw distinctions among honor violations by degree of seriousness (i.e., they tended to indicate that not all honor violations were equally serious; that toleration of an honor offense was less serious than lying, cheating, or stealing; and that not all honor offenders should be expelled).
- Indicate less trust in the fairness of the honor system (i.e., they tended to indicate that the honor system was not administered fairly and impartially, that honor punishments were not appropriate to the offense, and that they did not fully trust the honor investigators).
- Perceive that the honor system was misused (i.e., they tended to see the system used to enforce regulations and as an easy way to remove someone from the academy), and
- Place greater value on loyalty to peers (i.e, they tended to see loyalty as the highest form of honor, indicate that loyalty to friends should take precedence over rules and regulations, and to see conflict between the honor system and the academy's emphasis on being a team player and personal loyalty).

Many Students Perceived That the Honor Standard Is Higher at the Academy Than Among Active Duty Officers

We asked respondents whether they agreed or disagreed with the statement: "The concept of honor is much more stringent at the Academy than it is among active duty officers." The percent of students agreeing or strongly agreeing was 66 percent at the Air Force Academy, 61 percent at the Military Academy, and 46 percent at the Naval Academy. This could indicate either a cynical view of the degree of honor on active duty or academy students see themselves as being held to a higher standard. Some of the student comments on this issue were quite strident. Examples such as the following reveal considerable depth of feeling concerning a perceived double-standard regarding honor at the academy and honor on active duty.

"We use someone else's words and ideas and its called cheating. The Supe [Academy Superintendent] uses someone else's words and ideas and they call it a great speech. That's how it works in the real world." (Naval Academy midshipman)

"We follow the Code out of fear while we are here. But most of us will fall right into line with all the career protectionism crap when we go on active duty." (Military Academy cadet)

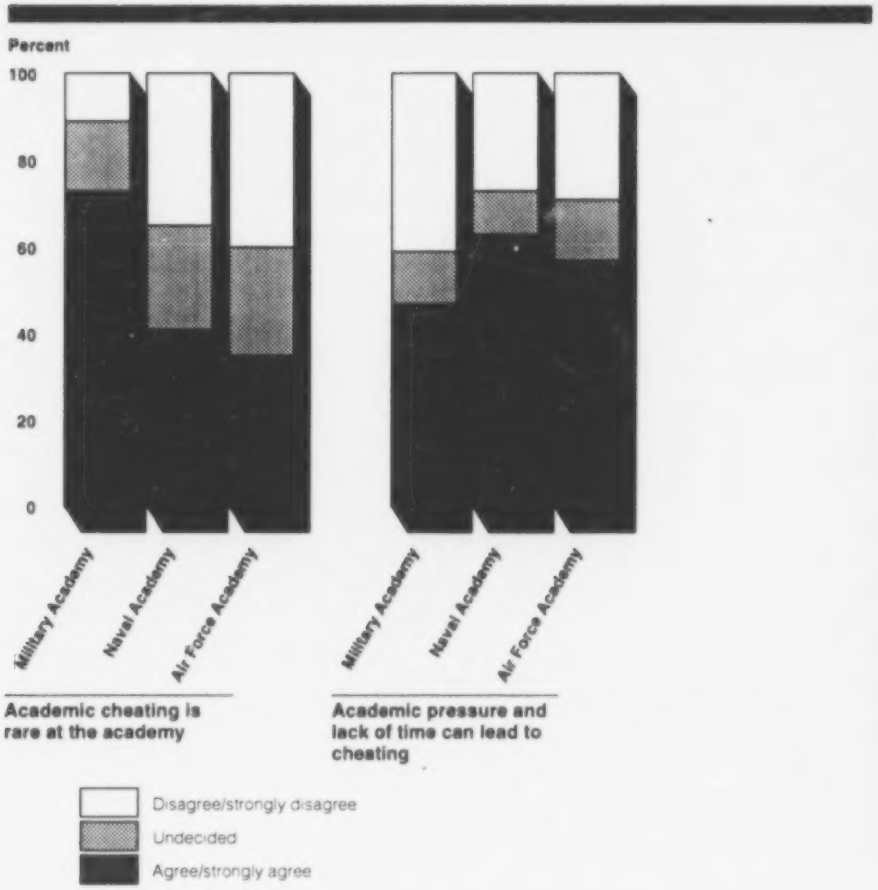
"One need not look further than the Space Command's treatment of the officers who dared to tell the truth about the programs the Air Force wanted, to see that honor doesn't count for much in the real Air Force." (Air Force Academy cadet)

"If we dissemble or quibble, we're gone. If a general does it to a congressional committee to get some new weapon system, he gets promoted. Just another case of 'Do as I say, not as I do'." (Air Force Academy cadet)

Student Perceptions About Cheating

We asked respondents about their perception of the frequency of academic cheating (see fig. 3.10). At the Military Academy, 11 percent disagreed with the characterization of cheating as "extremely rare," as did 35 percent at the Naval Academy and 40 percent at the Air Force Academy. Thus, according to the perceptions among cadets and midshipmen, cheating may be more prevalent than the occasional scandals make it appear.

Figure 3.10: Student Views Regarding Frequency and Causes of Cheating



Source: Responses to GAO questionnaires

As shown in the figure, about half or more of the students at each academy saw the twin pressures of academics and inadequate time as likely causes of cheating. However, since 54 to 70 percent of cadets/midshipmen indicated they did not have sufficient time to satisfy all the demands made on them and 44 percent to 65 percent indicated they did not have sufficient time for their academic studies, such pressures appear to be a fact of academy life.

Over Their 4-Year Academy Careers, Student Views Toward Honor Appear to Become Less Positive

In its December 1993 report on honor at the Naval Academy, the Honor Review Committee of the Naval Academy Board of Visitors stated that midshipmen's attitudes toward honor appeared to become increasingly cynical over their 4 years at the Academy. To see if this observation also held at the other academies, we compared the responses of the Class of 1994 to our surveys conducted in 1990-91 with that class' responses in 1994. Since both the 1990-91 and 1994 administrations involved random samples, we believe each provides a reliable assessment of the prevailing attitudes among the members of that class at those two points in time, even though the same individuals were not necessarily included in both samples.

The data support the observation that attitudes of first class (senior) students at each academy appeared less positive toward the honor system than they were as fourth class (freshmen) students. In particular, members of the Class of 1994 became

- less likely to indicate that honor was well respected,
- less willing to report a close friend for either a possible or a clear-cut honor violation, and
- more likely to see honor as more stringent at the academy than among active duty officers.

There was also a tendency for students in the Class of 1994 to see fewer of the honor scenarios as violations in their last year at the academy than they did in their first year. However, according to academy officials, this result could represent the first class (seniors) having gained a more thorough knowledge of the intricacies of the honor system and the elements of proof needed to determine that a violation has occurred, which can result from living under the system for 4 years.

In light of these findings, it is interesting that some elements of the academy honor education programs appear to take hold over the 4 years. Senior students were less likely than they were as freshmen to indicate that

- loyalty was the highest form of honor,
- loyalty should take precedence over rules and regulations, and
- the honor system conflicts with the academy's emphasis on teamwork and personal loyalty,

In some ways, Class of 1994 students at the Military and Air Force academies also appeared to become more "hard-line" regarding honor over their 4 years. For example, the percentage indicating that honor offenders should be expelled and the percentage indicating that there was no such thing as a minor honor violation increased from when they were freshmen.

Comparison of Academy Conduct Systems

Codes of conduct at all three academies define acceptable cadet behavior as adherence to civilian laws, UCMJ, and service and academy directives and standards. Students who violate the academies' conduct standards may be subject to an administrative disciplinary hearing, where determinations of fact are made concerning the alleged misconduct.

The academies characterize their disciplinary systems as correctional and educational rather than legalistic or punitive. Their goals are to instill in the cadets and midshipmen the desire to accept full responsibility for their actions and to place loyalty to the service above self-interest or friends and associates. The conduct system at each academy consists of two types of reviews: reviews of specific violations and reviews of overall records for cadets/midshipmen who are deficient in conduct.

Conduct Systems and Adjudicatory Processes

Each conduct system and related adjudicatory processes are based essentially on similar principles of conduct and character development. However, the systems and processes vary considerably across the three academies.

Military Academy

There are five levels of conduct adjudication at the Military Academy. These are, in increasing order of severity, award of demerits, company boards, regimental boards, hearings involving violations of Academy regulations, and court-martial hearings involving violations of UCMJ.[1]

Demerits are awarded for minor infractions of cadet regulations, for example, not shining shoes properly. Cadets are allowed a certain number of demerits per month, depending upon their class. Once this number is exceeded, cadets must serve one punishment tour[2] per demerit in excess of the monthly allowance. Company boards may award punishments of up to 20 demerits and 20 punishment tours for infractions such as being late for class through neglect. A company board is not considered to be a major disciplinary proceeding.

A regimental board, convened for such offenses as leaving post without authority, is considered to be a major disciplinary proceeding. A regimental board may award punishments of up to 35 demerits, 100

[1]Cadets at the Military Academy are part of the Army and are subject to military law. However, by Army regulation (paragraph 3-3a, AR 27-10), article 15, nonjudicial punishment, may not be imposed on cadets.

[2]A tour is a period, about an hour, during which the individual is assigned to perform a specific duty at a particular place.

punishment tours, and 4 months' restriction to specific areas (typically a cadet's own room, the nearest latrine, and the orderly room). If a cadet gets three regimental boards during his/her cadet career, an investigating officer is appointed to review the board proceedings and recommend action to the Superintendent. A hearing for suspected violations of Academy regulations is the most serious level of administrative adjudication and may result in a cadet being separated. Court-martial is reserved for serious offenses that are considered clearly criminal, such as sexual assault, fraud, and so forth.

Naval Academy

At the Naval Academy, conduct offenses are categorized into six levels of seriousness, 1000 through 6000. Levels 1000 through 3000 cover infractions, such as failure to have door open when a room is occupied, unauthorized use of an official telephone, and unauthorized absence of 30 minutes or less. Punishments for these levels are awarded by commissioned officers at the company level. The remaining levels, 4000 through 6000, involve more serious infractions, such as intentional failure to perform a duty, sexual misconduct, and hazing. Punishments for offenses at these levels are determined at the battalion level or higher.

Each midshipman is allowed a certain number of cumulative demerits per year or over his/her career, depending upon class. Based on these demerit levels, midshipmen are given a letter grade for their conduct. The three levels of conduct standing are proficient, deficient (exceeding two-thirds of the annual allowable demerit total), and unsatisfactory (exceeding the annual or cumulative demerit allowance). Low conduct grades can result in a hearing to determine if the midshipman should be allowed to continue at the Academy.

Air Force Academy

At the Air Force Academy, conduct violations are categorized into four levels of seriousness: A, B, C, and D. For class A conduct offenses, such as a minor uniform appearance violation, the awarding authority for punishment lies within the cadet chain-of-command. Class B offenses, such as being absent from class, and class C offenses, such as being outside cadet limits without permission, are adjudicated by a cadet's Air Officer Commanding and the group Air Officer Commanding, respectively.

Class D offenses, such as drug or alcohol abuse, sexual misconduct, and hazing, are the most serious level of misconduct and may constitute grounds for involuntary dismissal. For violations of UCMJ, the Commandant

of Cadets can initiate article 15 or court-martial actions. But most class D cases were normally adjudicated by a Cadet Disciplinary Board. Recommendations for involuntary separation were reviewed by the Military Review Committee, a standing committee of the Academy Board.

In September 1994, the Air Force Academy proposed to the Secretary of the Air Force that the Cadet Disciplinary Board be replaced with a streamlined Military Review Committee hearing. The objective of the proposal was to streamline, ensure due process, and align Academy disenrollment procedures for discipline and aptitude more closely with Air Force discharge procedures. The Secretary approved the proposal as of January 1, 1995.

Misconduct Statistics

The number of conduct hearings held varied greatly from academy to academy. Because of differences in the ways each academy categorizes and handles conduct offenses, the rates of misconduct hearings and the dispositions of those cases are not comparable.

For academic years 1991 through 1994, the Military Academy had 30 cases in which cadets had been accused of serious cases of misconduct and were investigated under the provisions of Regulations, USMA. About 17 percent of the cases were dropped before hearings. Of the 25 cadets that had formal hearings, 15 (60 percent) were found guilty. Ten (67 percent of those found guilty) were separated.

The Naval Academy had 147 serious (potential separation level) misconduct cases during academic years 1991-92 and 1992-93 and the first semester of 1993-94. Of those cases, 32 (about 22 percent) were dropped before a hearing. Of the 115 midshipmen that had hearings where final dispositions have been made, 84 (about 73 percent) were found guilty. Thirty-two midshipmen (about 38 percent of those found guilty) were separated.

The Air Force Academy had 139 serious (class D and UCMJ) misconduct cases during academic years 1991-94. Of those cases, 8 (about 6 percent) were dropped before a hearing and 7 were still pending a decision at the time of our review. Of the 124 cadets that had hearings where the final dispositions were known, 99 (about 80 percent) were convicted. Twenty-five cadets (about 25 percent of those found guilty) were separated.

Comparison of Due Process Protections in Academy Conduct Adjudication Systems

The due process protections available to cadets and midshipmen who are charged with serious conduct offenses vary across the academies and are somewhat different from those provided in honor cases (see table 4.1). However, many of the due process concerns raised by defense attorneys with regard to honor hearings are seen by those attorneys as also applicable to administrative conduct hearings (see ch. 2).

Table 4.1: Due Process Elements in the Academy Conduct Systems

Element	Military Academy	Naval Academy	Air Force Academy[a]
Right to adequate notice	Yes, 7 days' minimum notice.	Yes, 5 days' minimum notice.	Yes, 3 days' minimum notice.
Right to an open hearing	Open to DOD personnel, cadets, and family. Other persons may be admitted at the discretion of the Superintendent.	Not open to family or nonacademy friends.	Cadet and officer chain of command are allowed to sit in. Observers may be permitted by Board President.
Right to an impartial tribunal	Yes.	Yes.	There is no provision for the accused to challenge a Board member for bias.
Right to present argument	No. The accused may only make unsworn opening and closing statements.	Yes, but exercising this right opens the accused to being questioned.	No. The accused may make an opening statement, clarify or correct any written statements, and make a closing statement.
Right to present and cross-examine witnesses	Yes.	Yes, but exercising this right opens the accused to being questioned.	Partial. The Board conducts all questioning.
Right to know opposing evidence	Yes.	Yes.	Yes.
Right to representation by counsel	Limited. Attorney cannot represent at hearing.	Limited. Attorney cannot represent at hearing.	Limited. Attorney cannot represent at hearing.
Right to have decisions based solely on the evidence presented	Yes.	Yes.	Partial. The Board may consider recommendation statements that may not have been discussed in the hearing.

(continued)

Element	Military Academy	Naval Academy	Air Force Academy[a]
Right to a complete record of the proceedings, including the rationale for the verdict	No. A summarized transcript is provided and it does not ordinarily address the rationale for the verdict.	Partial. While a transcript and an audio tape are provided, the rationale for the decision is provided by the Commandant.	Partial. A summarized transcript and minutes of the proceedings is provided, but it does not address the rationale for the verdict.
Right to an independent appellate review	No, the Staff Judge Advocate reviews the case file for legal sufficiency.	No, but accused may make a Request for Reconsideration. The Superintendent reviews the case file.	No. However, the accused may request an AFR 53-3 Hearing Officer review. The Academy Board reviews the case file if separation is recommended.
Right to remain silent	Yes, during a misconduct investigation and hearing.	Yes, as soon as it's known that the case involves a 6000-level offense.	Not unless a UCMJ violation is involved.
Right to have involuntary confessions excluded	No.	No.	No.

[a]Our analysis was based on review of the Cadet Disciplinary Board process

Right to Adequate Notice

The minimum amount of notice required to be provided to a student charged with a serious conduct offense varies from 3 days at the Air Force Academy to 7 days at the Military Academy. Air Force Academy officials told us that while, there was no specific minimum notice for serious misconduct offenses, every effort was made to close the Air Force Cadet Wing Form 10 (the form used to report conduct offenses) as soon as possible. Academy officials also said that they notified an accused orally, and not in writing, and an accused could not get additional time to prepare for a hearing because the accused was fully aware of the charges pending against him/her.

At the Naval Academy, we were told that while an accused has a minimum of 5 days to prepare for an investigative hearing, as a practical matter an accused tends to have more notice for more serious offenses. Generally, the Conduct Office has 11 working days to generate a formal charge;

18 days for an investigative hearing; 23 days for a Commandant's hearing; and 25 days (5 weeks) for a Commandant's memorandum.

Right to an Open Hearing

The Military Academy limits attendance to DOD personnel, cadets, and family. Other persons may be admitted to observe a proceeding, at the discretion of the Superintendent, if their attendance would not have an adverse effect on the fairness and dignity of the proceeding or the respondent's right of privacy.

The Naval and Air Force academies also close their administrative conduct hearings to the public at large. The Air Force Academy permitted observers (usually the future board membership pool) to attend all or part of the hearing at the discretion of the board president and the cadet chain of command was allowed to sit in during testimony. The Naval Academy does not allow the accused's family or friends to attend the hearing.

Right to an Impartial Tribunal

One major difference among the academies is the nature of the misconduct tribunal. At the Naval Academy, a single investigating officer collects the evidence, holds the hearing, and makes recommended findings. The Military Academy's regimental board consists of the Regimental Tactical Officer. As mentioned previously, the Air Force Academy had a Cadet Disciplinary Board, which consisted of four officers and three cadets. As of January 1, 1995, the Air Force Academy replaced that board with a two-step process. When a cadet is suspected of serious misconduct, an inquiry may be conducted by the Security Police, Commander, or by an appointed inquiry officer. At the conclusion of the inquiry, the Commander may opt for cadet punishment or may recommend disenrollment. If disenrollment is recommended, the case will be forwarded to the Military Review Committee for fact-finding and a recommendation of disposition.

At both the Military and Naval academies, a cadet/midshipman can challenge the investigative officer for lack of impartiality or failure to qualify as an investigative officer. This challenge will normally occur before the fact-finding portion of the investigation, but may be done during any portion of the investigation when the respondent discovers possible grounds for challenge.

At the Air Force Academy, the board president and board members had certain procedures to follow regarding the circumstances under which a

member would be considered not to be impartial. The accused could not directly challenge board members for bias, although the accused could present facts demonstrating that a board member was biased. The board president made the determination as to whether a board member would be excused for bias.

The Right to Present Argument

At the Military Academy, an accused may make an unsworn opening statement before the fact-finding portion of the investigation begins. At the conclusion of the hearing, an accused can make an unsworn argument to the investigating officer on the merits of the allegation and about possible recommendations by the investigative officer.

The Naval Academy allows accused midshipmen the right to present their own argument. The accused may receive assistance from his/her attorney on overall presentation strategy.

An accused at the Air Force Academy did not present argument to the board members. However, an accused had the right to make an opening statement at the hearing. After the opening statement, witnesses were brought in and questioned by the board about their written testimony. An accused could make a closing statement to clarify any testimony or answers to questioning.

Right to Present and Cross-Examine Witnesses

At both the Military and Naval academies, an accused cadet/midshipman may call witnesses, present evidence in his/her own behalf, and cross-examine all witnesses. However, at the Naval Academy, if an accused questions witnesses, the accused may be questioned. Also, an accused midshipman needs permission for character witnesses to testify on his/her behalf.

During a Cadet Disciplinary Board hearing at the Air Force Academy, only the board members could cross-examine witnesses. An accused cadet could not question opposing witnesses directly, but could submit evidence, names of prospective witnesses, and questions to the board president. The board president had the discretion to call witnesses to testify.

Right to Know Opposing Evidence

At all three academies, an accused is entitled to a copy of all documents and witness statements in the case file. An accused is also given the names and addresses of all witnesses expected to testify at the hearing.

Right to Representation by Counsel

Each academy informs students accused of serious conduct offenses, when dismissal is a possibility, that they have a right to legal counsel. For purposes of consultation, an accused may obtain civilian counsel at his/her own expense, consult with military counsel provided free of charge by the academy, or do both. The right to counsel, however, is limited to advice given outside of the hearing. An accused's counsel may be present as a spectator only at the Military Academy.

Right to Have the Decision Based Solely on the Evidence Presented

The conduct hearings at each academy are supposed to consider only that information that is presented at the hearings. Since these hearings are considered administrative, not judicial, there are no formal rules of evidence and any information that is considered reasonably relevant to the issues in question will typically be allowed.

Right to Have a Complete Record of the Proceedings

None of the academies provides a convicted cadet/midshipman with an explanation of the rationale for their decision and sanctions. A convicted cadet at the Military Academy receives a summarized record of the proceedings and findings, which is authenticated and certified by the investigating officer, a copy of the Staff Judge Advocate's legal review, and the Commandant's recommendation.

At the Naval Academy, a convicted midshipman receives a copy of the investigative hearing report and, upon request, a copy of the audio tape of the hearing. However, the accused does not get a copy of the Staff Judge Advocate's recommendations that is forwarded to the Superintendent.

At the Air Force Academy, a verbatim transcript was not made of the proceeding. Convicted cadets were given a summary of the hearing and minutes of the case. A cadet did not receive a copy of the recommendation of his/her Air Officer Commanding.

Right to an Independent Appellate Review

There is no process for a formal, independent appeal of administrative conduct decisions at the Military and Air Force academies. At the Naval

Academy, however, a convicted midshipman may request reconsideration of either a finding of guilt or the award of a particular punishment.

Each academy does, however, conduct a legal review through its staff judge advocate. At the Military Academy, the Staff Judge Advocate reviews the record of proceedings to determine whether (1) legal requirements have been complied with, (2) any errors that may have been made had a material effect, (3) the findings of the investigating officer are supported by the requisite proof, and (4) the recommendations are supported by the findings. The Staff Judge Advocate may also make recommendations concerning disposition of the case. At the Naval Academy, the legal review is conducted by the Superintendent's Staff Judge Advocate, after the case has been reviewed by the Commandant. At the Air Force Academy, the Staff Judge Advocate reviewed the case to determine that legal requirements had been met after the Commandant has reviewed the case. A convicted Air Force Academy cadet who had been recommended for separation could elect to have a review by a hearing officer in accordance with Air Force Regulation 53-3 or the Commandant could refer the case to a hearing officer or board of officers. The Academy Board reviewed all cases when cadets were recommended for separation and voted to retain or disenroll the cadet. Cadets who were being considered for disenrollment could submit a written statement with supporting documents to the Academy Board.

Right to Remain Silent

At the Military Academy, a cadet may be required to state orally what he or she knows about an incident, subject to his or her rights against self-incrimination. A cadet whose conduct is subject to investigation and cadets who are witnesses may decline to answer questions if their statements would tend to incriminate them. For this purpose, self-incrimination involves a situation in which a cadet could be required to admit to a criminal offense. An article 31 rights warning (the right to remain silent) is required in the case of a suspected criminal offense. A cadet is not afforded the right to remain silent merely because he or she is suspected of committing a delinquency under some conduct regulation.

As soon as Naval Academy officials know they are dealing with a 6000-level offense, they inform the accused that he/she has the right to remain silent. An accused midshipmen has the right to remain silent at the investigative hearing without any adverse inference being drawn from exercising that right. If, however, the accused makes a statement at the

hearing concerning a particular offense, he or she is expected to answer any questions the investigating officer may have concerning that offense.

At the Air Force Academy, an accused cadet does not have the right to remain silent when confronted by a superior. When an officer or cadet in the chain of command requests a statement from a cadet, the cadet must provide a statement revealing all information about the incident, including names of cadets or other persons involved, unless the conduct violation(s) in question is to be punished under UCMJ. If during questioning or the investigation of an incident, a cadet reveals information indicating a possible UCMJ violation, all questioning is to be stopped immediately and the cadet is to be informed of his/her legal rights under UCMJ Article 31 (the right to remain silent). Academy officials also stated that a cadet can terminate any interrogation and request legal counsel at any time.

Right to Have Involuntary Confessions Excluded

At all three academies, incriminating statements are considered valid, even if the individual was denied or not advised of the right to remain silent, since conduct hearings are considered administrative proceedings and rules of evidence do not apply. Failure to grant the accused the right to remain silent will not necessarily result in any confession being excluded as evidence.

Some Elements of Administrative Adjudicatory Systems Are Inconsistent With DOD or Service Policy Regarding Nonjudicial Disciplinary Proceedings

As noted earlier, the academies consider their honor and conduct systems to be administrative systems. As such, they are essentially similar to nonjudicial disciplinary proceedings for military personnel authorized under UCMJ Article 15. Military law provides for nonjudicial punishment as a means of imposing prompt punishment for minor violations and to correct, educate, and reform offenders in an efficient manner without subjecting them to the stigma that a court-martial would entail. A nonjudicial disciplinary proceeding is not a trial, and a determination of guilt does not constitute a court conviction.

Despite the similarities between the objectives of the academy administrative adjudicatory systems and DOD-wide and service objectives regarding nonjudicial disciplinary proceedings, there are several key inconsistencies between the rights given service personnel and the rights accorded academy students under the administrative conduct and honor systems. The inconsistencies, with academy students having less protection, involve the right to be represented by counsel; the right to remain silent; the right to an independent appeal; the maximum length of

the punishment of "restriction;" and, in the case of the Military and Air Force academies, the standard of proof used to determine guilt.

One major difference between the academy administrative adjudicatory systems and DOD nonjudicial punishment policy involves the right to have counsel appear with the accused and present the case for the accused. The Manual for Courts-Martial states that before nonjudicial punishment may be imposed, the accused servicemember is entitled to appear personally before the administrative authority imposing the nonjudicial punishment. If the accused requests such a personal appearance, he/she is entitled to be accompanied by a spokesperson, who may be a lawyer. This spokesperson may speak for the accused, but may not necessarily question witnesses except as the nonjudicial punishment authority may allow as a matter of discretion. The presence of a lawyer as the personal representative does not make a nonjudicial hearing a formal adversary proceeding; it only gives the accused someone to advise and to speak up for him/her. At the academies, the accused is not entitled to be represented by a spokesperson or lawyer at any administrative conduct or honor hearing.

A second difference concerns the right to remain silent. Rule 301 of the Manual for Courts-Martial makes UCMJ, Article 31 (the right to avoid self-incrimination) expressly applicable to nonjudicial punishment. Under the academy administrative conduct systems, students must answer a question that incriminates them, except when they are being charged under UCMJ.

A third difference involves the right to an independent appeal. Under article 15, a servicemember who considers the punishment to be unjust or disproportionate to the offense may appeal to the next superior authority. When punishment has been imposed under delegation of a commander's authority to administer nonjudicial punishment, the appeal must be directed to someone other than the commander who delegated the authority. Since the administrative adjudicatory systems are a delegation of authority from the Superintendent, under the academy adjudicatory systems, only a decision to separate a student with the required review by the service secretary would appear to meet this definition of appeal.

A fourth difference involves maximum punishments. UCMJ imposes limitations on article 15 punishments. One of those limitations involves the punishment of "restriction." The maximum restriction allowed by UCMJ for nonjudicial punishment is 60 days, and then only if the punishment is

imposed by an officer with general court-martial jurisdiction or a flag rank officer. At each academy, we found that restriction periods of longer than 60 days have been imposed on students under the administrative conduct systems.

The last difference involves standard of proof. For Naval Academy midshipmen, the standard of proof for administrative conduct hearings is the same at the Academy as it is for nonjudicial punishment in the fleet, "preponderance of the evidence." However, the standard of proof used in Military and Air Force Academy administrative conduct hearings (preponderance of the evidence) is lower than that used for nonjudicial punishment in the active Army and Air Force. The Army has been using the "beyond a reasonable doubt" standard for its nonjudicial punishment cases since 1973. Similarly, Air Force Instruction 51-202, paragraph 3.3, states that the commander must consider whether proof "beyond a reasonable doubt" would be obtainable before initiating action under article 15; if not, it states that action under article 15 is generally not warranted.

In its official comments, DOD stated that it saw no clear basis for concluding that protections provided under the administrative conduct systems must parallel nonjudicial disciplinary proceedings. DOD stated that a nonjudicial disciplinary proceeding is a quasi-judicial process established under the UCMJ and the rights that accrue to an offender under the UCMJ are quite specific. Disposition under the academy administrative honor and disciplinary systems, according to DOD are not subject to the same criteria. However, a defense attorney stated that he questions whether the academies have the authority to substitute an administrative disciplinary system that provides less protection for offenders in lieu of legislatively mandated disciplinary system that has the same objectives.

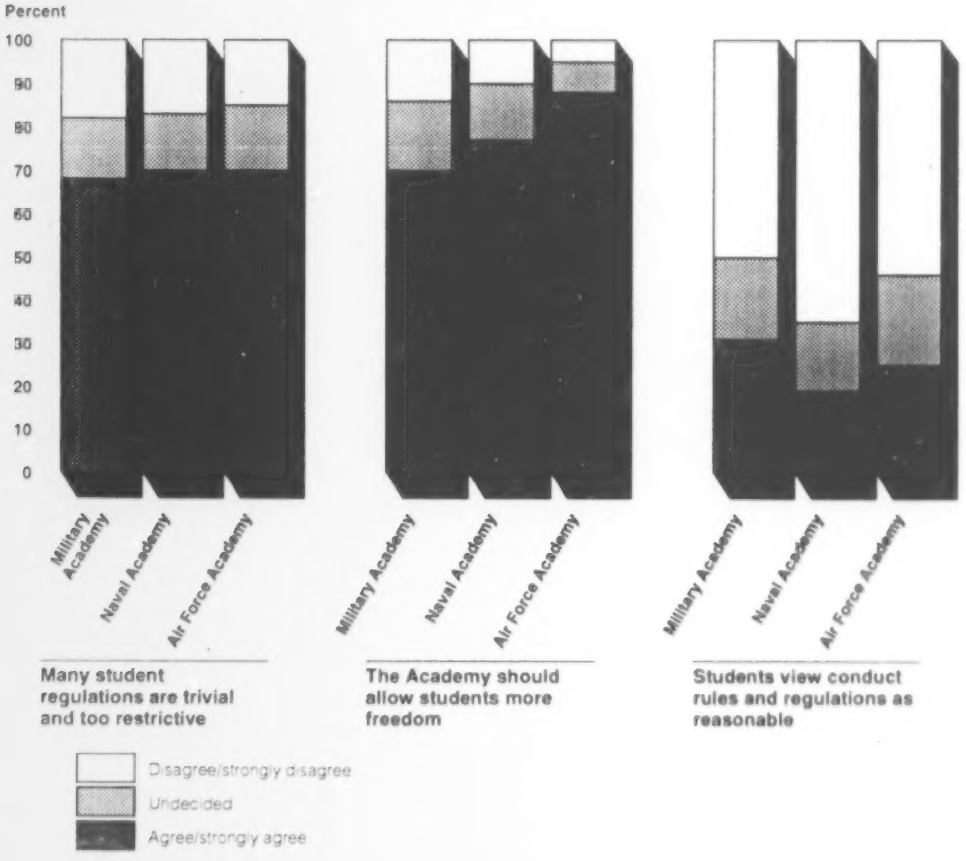
Cadet/Midshipman Perceptions and Attitudes Concerning the Conduct System

We asked questions on our survey pertaining to the conduct rules and disciplinary systems at the academies. Most academy students saw many of the rules and regulations imposed on them as trivial and unrealistic and they believed that the academies should allow students more freedom. A majority of students at the academies perceived that the handling of conduct offenses, the application of rules and regulations, and the disciplinary actions imposed were not consistent. Students appear split regarding whether strict enforcement and punishment are appropriate. Finally, the perceptions of the Class of 1994 Air Force Academy cadets changed very little from their freshman year while those in that class at the Naval and Military academies tended to become increasingly of the opinion that the rules were unreasonable and that discipline was administered inconsistently.

Many Rules and Regulations Seen as Unreasonable

The students overwhelmingly indicated that the academies have overregulated them. Most of the students at each academy indicated that (1) many of the academy's student regulations were trivial and unrealistically restrictive, (2) the academies should allow them more freedom, and (3) their peers did not view the conduct rules and regulations as reasonable. (See fig. 5.1.)

Figure 5.1: Student Perceptions Regarding the Reasonableness of Rules and Regulations



Source: Responses to GAO questionnaires.

The following write-in comments also addressed this overregulation issue.

"The problem with the Naval Academy and our sister service academies is that MIDN [midshipmen] aren't given enough responsibility. The feeling here is that we are treated like children for too long. . . We have more restrictions on us than most enlisted folks." (Naval Academy midshipman)

"Too many stupid, useless, and inane regulations. Many of them serve no purpose. Many cause unneeded restrictions on lifestyles." (Military Academy cadet)

"Get rid of all the stupid rules . . . Give cadets more responsibility and authority . . . We might actually surprise you with our performance." (Air Force Academy cadet)

Some comments indicated that the rules were delaying or getting in the way of students being able to mature.

"Mids [midshipmen] need more freedom from the restrictive rules and regulations so they can make mistakes and learn from them before entering active duty." (Naval Academy midshipman)

"My biggest question since I started here . . . How do midshipmen learn if everything is scheduled and done for them? They are not learning the basics of time management and how to handle their money." (Naval Academy midshipmen)

There may also be some connection between the degree of regulation and the widespread unwillingness to report honor violations. As one midshipman wrote, "I think many of the restrictive [regulations] and the overloaded schedule breed contempt for the system including, unfortunately, the Honor System."

This concern was also expressed by Ellis and Moore in their book on West Point published 20 years ago. As they stated, cadets

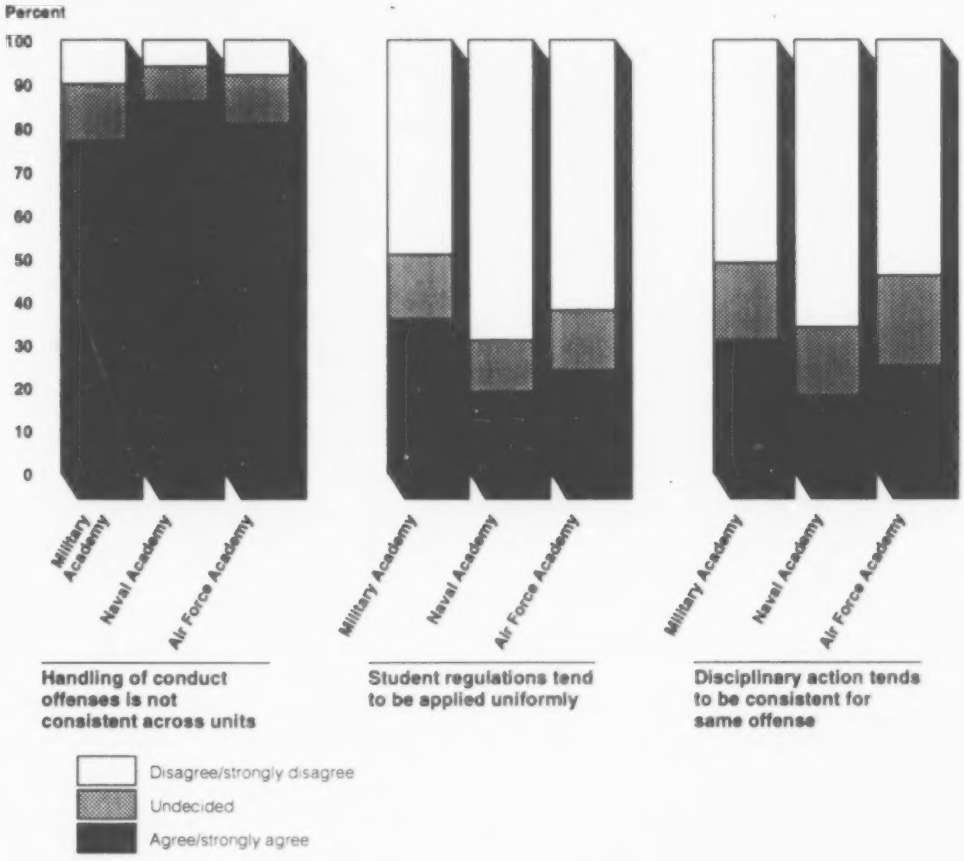
"become increasingly irritated at the accretion of petty, 'Mickey Mouse' regulations that, from their perspective, served no useful purpose. The result was not only an increase in the violation of regulations but also creation of an atmosphere in which cadets who violated regulations frequently felt that they were doing nothing wrong. The absence of guilt and the parallel conviction that punishment was undeserved combined to sanction violations of the Honor Code (particularly lying) as a means to avoid getting caught."[1]

Administration of Discipline Seen as Inconsistent

Three-quarters or more of the students at each academy indicated that conduct offenses were handled differently across the academy. In addition, they perceived the regulations as not being uniformly applied and that students committing the same offense received different disciplinary actions. (See fig. 5.2.)

[1]Ellis, J. and Moore, R., School for Soldiers, New York: Oxford University Press, 1974, p. 187.

Figure 5.2: Student Perceptions Regarding Consistency in the Administration of Discipline



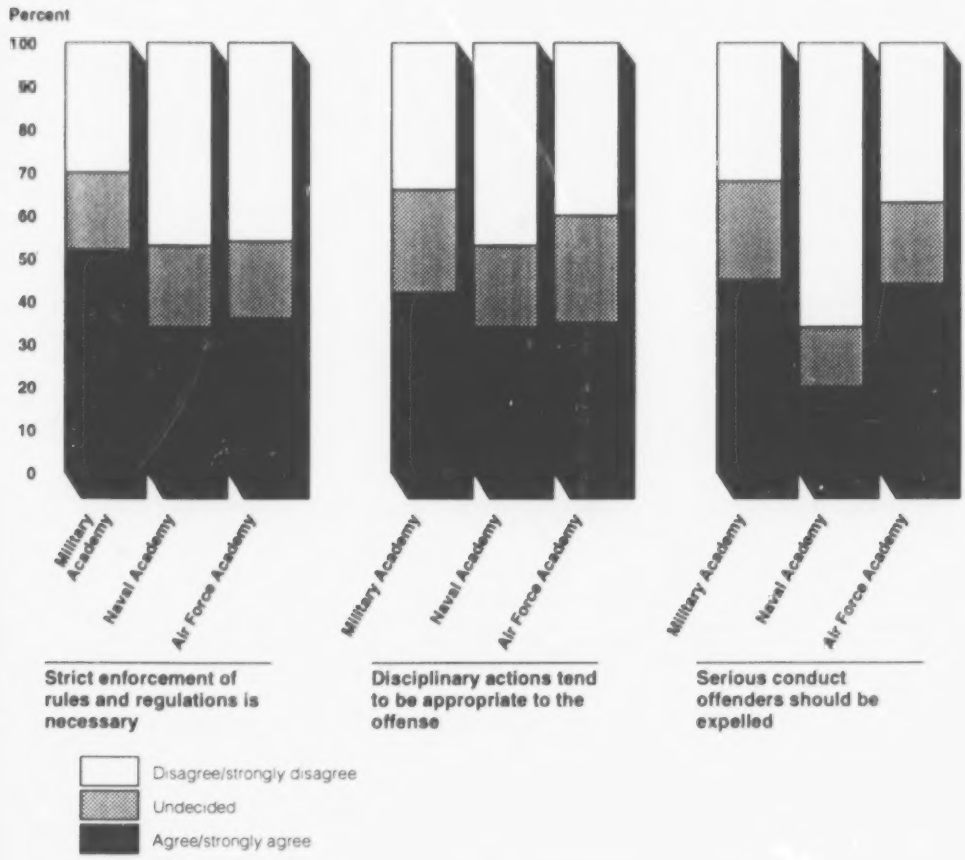
Source: Responses to GAO questionnaires

Student Views on Enforcement Were Mixed

While about one-third or more of the students believed that strict enforcement was important, about one-third or more disagreed. Similarly, there was little agreement regarding whether disciplinary actions were appropriate to the offense, although from the wording of the question we were unable to determine whether those who believed the punishments were inappropriate saw them as being too harsh or too lenient. There was

also considerable disagreement on whether serious[2] conduct offenders should be expelled. (See fig. 5.3.)

Figure 5.3: Student Views on Punishment and the Enforcement of Rules and Regulations



Source: Responses to GAO questionnaires.

[2]For the reference of the respondent, a serious conduct offense was defined in the questionnaire as a "6000-level" offense at the Naval Academy, a "serious Regulations-USMA or court-martial" offense at the Military Academy, and a "Class III (50/80/4), Article 15, or court-martial" offense at the Air Force Academy.

Changes in Perceptions From Freshman Year to Senior Year

At the Military and Naval academies, perceptions of the Class of 1994 regarding the conduct systems tended to change from their freshman year to their senior year, while there was little apparent change in perceptions at the Air Force Academy. The responses of the Class of 1994 in their senior year at both the Military and Naval academies showed an increase in the proportion of students who viewed themselves as being overregulated with unreasonable rules and regulations and an increase in the proportion who perceived inconsistent and inappropriate disciplinary actions. At the Naval Academy, there was also an increase in the proportion who saw inconsistent handling of conduct offenses and lack of uniformity in the application of rules and regulations.

Comments From the Department of Defense

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FORCE MANAGEMENT

FEB 2 1995

Mr. Henry L. Hinton, Jr.
Assistant Comptroller General
National Security and International Affairs Division
U.S. General Accounting Office
Washington, DC 20548

Dear Mr. Hinton:

This is the Department of Defense (DoD) response to the General Accounting Office (GAO) draft report, "DOD SERVICE ACADEMIES: Comparison of Honor and Conduct Adjudicatory Processes," dated December 6, 1994 (GAO Code 703046 / OSD Case 9826). The DoD generally concurs with the report.

The Department agrees that the conduct systems at the Service academies are administrative. The DoD would also like to point out, however, that there is no clear basis for concluding that protections under those systems must parallel nonjudicial disciplinary proceedings. The latter is a *quasi-judicial* process established by the Uniform Code of Military Justice (UCMJ); the rights that accrue to an offender under the UCMJ are quite specific. Disposition under academy honor and disciplinary systems, on the other hand, are administrative and not subject to the same criteria. The Department appreciates the recognition by the GAO that the courts have generally found that the academies' adjudicatory systems provide students with the due process protections required by existing law for administrative systems.

In addition, the DoD agrees that differences in student conclusions as to what constitutes an honor offense depend upon inferences about the offender's intent. However, the DoD notes that such intent generally was not stated in the survey scenarios; therefore, varied interpretations by students reasonably could be expected.

The DoD appreciates the opportunity to comment on the GAO draft report.

Sincerely,

F. Pang

Description of Questionnaire Methodology

The purpose of this appendix is to set forth our questionnaire development process, our sampling approach, the response rates, the weighting of the data, the processing of completed questionnaires, the sampling error, and other methodological issues. This report is part of a broader review of the Department of Defense service academies, which focused on various aspects of student treatment at the academies, including the treatment of women and minorities, the treatment of fourth class cadets and midshipmen, and sexual harassment, in addition to the operation of academy honor and conduct adjudicatory systems.

Questionnaire Development

We originally developed an omnibus questionnaire in 1990-91 to address the full scope of the broader review.[1] The 1994 version of the questionnaire was shortened by omitting most of the items that did not pertain to the honor and conduct systems or the issue of sexual harassment. The wording of the 1994 items was identical to the wording in the 1990-91 version.

Sampling Methodology

To ensure that an adequate number of women and minorities would be included, we used a stratified random sample design allowing us to oversample those two groups. We used the last digit of the social security number to randomly select respondents from each strata.[2]

Questionnaire Response Rates and Weighting of Data

The questionnaires were mass-administered to the academy students. Those selected for the sample were notified through academy channels to report to rooms designated for the questionnaire administration. The questionnaires were administered by our staff during what would otherwise have been free time for the respondents. Respondents were assured of anonymity. There was a make-up session for Air Force Academy cadets and Naval Academy midshipmen who had scheduling conflicts. Our survey administration time at the Military Academy conflicted with a scheduled academic placement examination for a portion of the Class of 1995. To ensure that this would not have an impact on the representativeness of our sample, those cadets scheduled for the

[1]A more detailed description of the questionnaire development process and the 1990-91 survey administration can be found in DOD Service Academies: More Actions Needed to Eliminate Sexual Harassment (GAO/NSIAD-94-6, Jan. 31, 1994).

[2]The last four digits of social security numbers are essentially a random field based on the order in which individual social security offices process the applications they receive. Selecting one final digit could be expected to yield a sample of about 10 percent.

placement examination were subtracted from the population before the random sample selection was made.

Completed questionnaires were received from 430 Military Academy cadets (a response rate of about 92 percent), 470 Naval Academy midshipmen (a response rate of about 90 percent), and 428 Air Force Academy cadets (a response rate of about 77 percent).

Since we oversampled on the female and minority subgroups, we needed to apply weights to the responses to allow them to represent the total academy population. Raw weights were computed by dividing the number of subgroup responses into the subgroup population. However, applying raw weights would artificially increase the number of cases and inflate tests of statistical significance. To avoid such inflation, we used the raw weights to compute constrained weights, which when applied to the data made the number of weighted cases equal the number of unweighted cases.[3] Weights applied in this manner yield data that represented the total population without distorting significance tests.

Processing Completed Questionnaires

We reviewed and edited each returned questionnaire. Responses were double-keyed, creating two files for each completed questionnaire. The two files were then compared for consistency and corrections were made as necessary. We checked the overall accuracy of the keyed data by verifying every 10th record back to the responses in the completed questionnaire. None of the three sets of questionnaires reached an error level of 1 percent.

Sampling Error

Since we surveyed samples of cadets, midshipmen, and faculty rather than the entire populations, our results were subject to some degree of uncertainty, or sampling error. Sampling errors represent the expected difference between our sample results and the results we would have obtained had we surveyed the entire populations. Sampling errors are smallest when the percentage split responding to a particular question is highly skewed, such as 5 percent responding "yes" and 95 percent responding "no" and greatest when there is about a 50-50 percentage split in responses.

On the basis of our response rates, we estimate that our results can be generalized to the cadet and midshipman populations at the 95-percent

[3]SPSS-X User's Guide, 3rd edition, Chicago, IL: SPSS, Inc., 1988.

confidence level, with a maximum sampling error of plus or minus 4.6 percent at the Military Academy, 4.4 percent at the Naval Academy, and 4.6 percent at the Air Force Academy.

The sampling errors for various subgroups for which data are cited are shown in table II.1. The decimal figures in the table are the sampling errors that correspond to various percentages of respondents selecting a particular response alternative. For example, if we state that 15 percent of Military Academy cadets responded in a given way, the table shows a sampling error of 3.3 percent corresponding to "all cadets" and a 15-85 percent response split. This means that we can be 95 percent confident that the percentage of cadets responding that way in the population would be within 15 percent plus or minus 3.3 percent, or between 12.7 and 18.3 percent.

Table II.1: Sampling Errors for Various Academy Subgroups

			Percentage split in responses									
Subgroup	**Population**	**Sample**	**05/95**	**10/90**	**15/85**	**20/80**	**25/75**	**30/70**	**35/65**	**40/60**	**45/55**	**50/50**
Military Academy												
All cadets	3,638	430	2.4	3.0	3.3	3.7	4.0	4.2	4.4	4.5	4.5	4.6
Males	3,232	341	2.8	3.5	4.0	4.2	4.5	4.7	4.9	5.1	5.1	5.2
Females	406	79	6.6	7.9	8.8	9.5	9.9	10.2	10.2	10.4	10.6	10.6
Class of 1994, in 1994	1,044	120	5.5	6.4	7.2	7.8	8.2	8.5	8.5	8.7	8.8	8.9
Class of 1994, in 1991	1,190	125	5.3	6.4	7.1	7.7	8.1	8.1	8.4	8.6	8.7	8.7
Naval Academy												
All midshipmen	4,049	470	2.3	2.9	3.2	3.5	3.8	4.0	4.2	4.3	4.4	4.4
Males	3,564	382	2.6	3.3	3.8	3.9	4.2	4.5	4.7	4.8	4.9	4.9
Females	485	88	6.4	7.5	8.3	9.0	9.4	9.7	9.6	9.9	10.0	10.1
Class of 1994, in 1994	967	120	5.5	6.4	7.2	7.8	8.2	8.5	8.4	8.7	8.8	8.8
Class of 1994, in 1991	1,157	146	4.8	5.7	6.4	6.9	7.3	7.3	7.6	7.8	7.9	7.9
Air Force Academy												
All cadets	4,012	428	2.5	3.1	3.3	3.7	4.0	4.2	4.4	4.5	4.6	4.6
Males	3,495	338	2.8	3.5	4.1	4.2	4.6	4.8	5.0	5.1	5.2	5.2
Females	517	90	6.3	7.4	8.3	8.9	9.3	9.6	9.6	9.8	10.0	10.0
Class of 1994, in 1994	1,029	101	6.3	7.2	8.0	8.7	9.1	9.4	9.4	9.6	9.7	9.8
Class of 1994, in 1991	1,283	137	4.9	6.0	6.8	7.2	7.7	7.6	7.9	8.2	8.3	8.3

The 1994 questionnaires were administered at all three academies in May 1994. The original administration of the academy student questionnaires occurred in December 1990 at the Naval Academy and in March 1991 at the Military and Air Force academies.

Representativeness of Narrative Comments

The write-in comments of students have been used in a number of places throughout this report to illustrate various points. While useful in illustrating the intensity of opinions held by some respondents, there is no way to quantify how widely held the views voiced by these respondents may be. The percentage of respondents who provided write-in comments was 37 percent at the Military Academy, 39 percent at the Naval Academy, and 33 percent at the Air Force Academy.

Assessment of Academy Officials Regarding Whether Various Scenarios Might Constitute an Honor Violation

Scenario	Military Academy	Naval Academy	Air Force Academy
A cadet/midshipman answers a questionnaire falsely in an attempt to protect the Academy from adverse findings.	Probably a violation.	Probably a violation.	Probably a violation.
A cadet/midshipman knowingly marks someone present on a roster when that person was not there.	Probably a violation.	Probably a violation.	Probably a violation.
A cadet/midshipman falsely states that he/she had a date New Year's Eve.	Unable to determine.	Unable to determine.	Probably a violation.
A cadet/midshipman takes something from another cadet/midshipman's room without first getting permission or leaving a note.	Probably not a violation.	Probably a violation.	Unable to determine.
An academically struggling cadet/midshipman receives assistance from a classmate on a homework assignment that was to be done independently.	Probably not a violation, if documented.	Probably a violation.	Unable to determine.
A cadet/midshipman promises to perform a task for another cadet/midshipman and then fails to do so.	Unable to determine.	Probably not a violation, but may be a conduct violation—failure to do duty.	Unable to determine.
As a favor to a civilian friend (because the item is cheaper than in civilian stores), a cadet/midshipman makes a purchase at the cadet/midshipman store for which he/she will be reimbursed.	Probably not a violation.	Probably a violation.	Probably not a violation.
A cadet/midshipman knows that a boast made by another cadet/midshipman is false and he/she just lets it slide.	Unable to determine.	Probably not a violation.	Probably a violation.
A cadet/midshipman finds a $20 bill on the floor of the cadet/midshipman store and keeps it without any attempt to determine who lost it.	A violation if no attempt made to find owner.	Probably not a violation.	Probably a violation.
A cadet/midshipman stuffs clothing under his/her covers to make it appear to anyone who looks in that he/she is in bed.	Probably not a violation.	Probably a violation.	Probably not a violation.
A cadet/midshipman who is below the legal drinking age orders an alcoholic beverage at a restaurant.	Probably not a violation.	Probably a violation.	Probably not a violation.
A cadet/midshipman commander disregards a directive because he/she believed enforcing it could have an adverse effect on members of his/her unit.	Probably not a violation.	Probably not a violation.	Probably not a violation.
A cadet/midshipman tells a "little white lie" to spare hurting someone's feelings.	Probably not a violation.	Probably not a violation.	Probably not a violation.
A cadet/midshipman makes an unauthorized personal toll call using an official telephone without paying for it.	Probably a violation.	Probably not a violation, but may be a conduct offense.	Probably a violation.
A cadet/midshipman asks a friend who took an examination earlier what the examination covered.	Asking is not a violation.	Probably not a violation.	Probably a violation.
A cadet/midshipman complies with a directive to shade an official report to make the company/squadron's performance look better than it actually was.	Probably a violation.	Probably not a violation.	Probably a violation.
A plebe/doolie who had been mistreated by an upperclass cadet/midshipman denies it when asked by someone in the chain of command.	Probably a violation.	Probably a violation.	Probably a violation.

(continued)

Scenario	Military Academy	Naval Academy	Air Force Academy
A cadet/midshipman submits a report that is literally the truth but does not tell the complete story because it would reflect badly on him/her.	Probably a violation.	Probably a violation.	Probably a violation.
A cadet/midshipman strongly disagrees with a course of action suggested by his/her Company Tactical Officer/Company Officer/Air Officer Commanding but does not voice an objection even when specifically asked.	Probably not a violation.	Probably not a violation.	Probably not a violation.
A cadet/midshipman covers his/her room windows with a blanket and stuffs a towel under the door so that studying after lights-out would not be detected.	Probably not a violation.	Probably not a violation.	Probably not a violation.
A cadet/midshipman below the legal drinking age uses a false ID in order to purchase alcoholic beverages.	Probably a violation.	Probably a violation.	Probably a violation.
A cadet/midshipman takes a government vehicle for a "joyride" but does not leave the Academy grounds.	A violation of UCMJ.	Probably a violation.	Probably a violation.
A cadet/midshipman allows a person to draw a false impression in order to convince that person to perform a favor.	Unable to determine.	Probably a violation.	Probably a violation.
An unprepared cadet/midshipman fails to raise his/her hand when an instructor asks if anyone is unprepared.	Probably not a violation.	Probably not a violation.	Probably a violation.
A cadet/midshipman tells a "little white lie" in order to save face or avoid being embarrassed.	Unable to determine.	Probably not a violation.	Probably a violation.
A cadet/midshipman asks another to perform his/her duty so that the cadet/midshipman can study, but goes out instead of studying.	Unable to determine.	Probably not a violation.	Unable to determine.
A cadet/midshipman uses a paper from a company area file and, while not copying any of it verbatim, paraphrases it completely.	Probably not a violation if documented.	Probably a violation.	Unable to determine.

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